* Together with International Brotherhood of Electrical Workers v. Labor Board.

CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 19

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ITS AFFILIATED COMPANIES, ET AL., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD ET AL.

No. 25

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, ET AL., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED { APRIL 2, 1938. APRIL 12, 1938.

CERTIORARI GRANTED MAY 16, 1938.

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HAROLD STRAUB:		
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Redirect	935	831
Recross	948	841
CHARLES A. SMITH:		
Direct	213	298
Cross	225	307
FOSTER STRAUSER:		
Direct	229	310
Cross	261	332
Redirect	267	337
STEPHEN L. SOLOSY:		
Direct	271	340
Cross	310	368
Redirect	350	395
Recross	350	395
Redirect	359	401
Recross	360	402
MARTIN A. WERSING:		
Direct	369	410
Cross	477	492
Redirect	511	516
J. GREULICH:		
Direct	523	526
Cross	584	571
WM. J. KENNEDY:		
Direct	600	583
Cross	693	653
Redirect	709	666
Recross	710	667
JOHN F. EMLER:		
Direct	714	671
Cross	751	697
MICHAEL A. WAGNER:		
Direct	759	703
Cross	788	723
Redirect	795	728
GUSTA HARDING:		
Direct	796	729
Cross	883	791

Note: The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the *Stenographic Minutes*, as well as the numbering of the *printed* pages. The pages of the Stenographic Minutes are referred to as S. M.; the pages of the printed record as R.

Witnesses for the Board (Continued)

	S. M. Page	Printed Page
JOHN SYMON:		
Direct	819	745
Cross	896	800
DAVID M. MCCARTHY:		
Direct	825	749
Cross	857	772
Redirect	874	783
Recross	882	790
ARTHUR CURRIE JOY:		
Direct	953	845
Cross	1011	890
Redirect	1025	901
Recross	1031	906
Redirect	1051	921
ROBERT MCCORMICK:		
Direct	1051	921
Cross	1066	933
Redirect	1078	941
EDWARD GIDEON:		
Direct	1079	942
Cross	1106	962
JOHN YOUNG:		
Direct	1114	967
Cross	1134	982
HARRY SPALDING:		
Direct	1146	991
Cross	1168	1006
Redirect	1177	1013
Recross	1179	1014
WM. J. BALCH:		
Direct	1186	1020
Cross	1194	1025
FRANK J. BRADY:		
Direct	1200	1029
Cross	1214	1039
ELEANOR MISBACH:		
Direct	1224	1047
Cross	1237	1055
Redirect	1246	1062
HARRY N. CROWELL:		
Direct	1249	1065
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Witnesses for the Board (Continued)

	S. M. Page	R. Printed Page
EDWARD SHEDLOCK:		
Direct	1265	1076
Cross	1275	1083
PHILEMON EWING:		
Direct	1280	1086
Cross	1315	1113
Redirect	1336	1127
Recross	1337	1129
TERRENCE MCGOWAN:		
Direct	1338	1129
Cross	1347	1135
FRANKLIN DE LUDE:		
Direct	1351	1138
Cross	1368	1154
Redirect	1379	1159
WM. CHANDLEY:		
Direct	1384	1163
Cross	1390	1167
WM. F. O'BRIEN:		
Direct	1392	1169
Cross	1403	1177
F. W. LOHNES:		
Direct	1405	1178
Cross	1409	1182

WITNESSES FOR RESPONDENT COMPANIES (PETITIONERS HEREIN)

FLOYD L. CARLISLE:		
Direct	1433	1202
Cross	1449	1213
Redirect	1492	1246
Recross	1496	1249
Redirect	1498	1250
HAROLD C. DEAN:		
Direct	1502	1254
Cross	1523	1269
Redirect	1575	1308
Recross	1575	1308

Note: The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the *Stenographic Minutes*, as well as the numbering of the *printed* pages. The pages of the Stenographic Minutes are referred to as S. M.; the pages of the printed record as R.

BOARD'S EXHIBITS

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
1	Charge filed with the Board by United Electrical and Radio Workers affiliated with the Committee for Industrial Organization, dated May 5, 1937			4	135	4
	Complaint issued by the Board, by its Regional Director for the Second Region, dated May 12, 1937 (with the various subsequent amendments shown)			4	135	7
	Acknowledgments and proofs of service of the complaint and notice of hearing			4	135	17
	Amended notice of hearing, dated May 25, 1937, issued by the Board			4	135	34
	Affidavit of service of amended notice of hearing			4	135	35
2	Stipulation of facts for the determination of the question of jurisdiction			23	151	1318
3	Pamphlet issued by the Consolidated Edison Company of New York, Inc., in August, 1936, entitled "Serving New York, electricity, gas, steam" (not printed; may be referred to in the Transcript of Record filed)			24	152	
4	Copy of an Order of the Board, dated June 2, 1937, denying the petition and motion of the respondent Companies for a prior and separate hearing as to jurisdiction and for dismissal of the complaint for want of jurisdiction			41	166	38
5	Notice of motion by the Board, served on respondent Companies on June 9, 1937, to amend its complaint by adding the name of Stephen B. Solosy as one of the persons named in Paragraph 19 of the original complaint as having been discharged by respondent Companies			41	166	40
6	One side of an application or pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed)	177	270	179	271	

Note: By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.

Board's Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
7	The other half of a pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed)	178	270	179	271	
8	Copy of the Constitution and By-laws of the United Electrical and Radio Workers of America (not printed; may be referred to in the Transcript of Record filed)			373	413	
9	Constitution of the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor (not printed; may be referred to in the Transcript of Record filed)	382	420	1500	1252	
10	Letter dated November 1, 1934, from Mr. Wersing to Mr. Kennedy			714	670	1390
11	Copy of the Employees' Representation Plan of The New York Edison Company, Inc. (not printed; may be referred to in the Transcript of Record filed)			879	787	
12	Reply dated January 4, 1937, of Mr. Edward P. Prezzano to Mr. Straub's letter (Respondents' Exhibit No. 15)			945, 1500	839, 1252	1391
13	(Produced at the request of the Board) Letter from Mr. D. W. Tracy, President of the International Brotherhood of Electrical Workers, to Mr. Floyd L. Carlisle, dated April 16, 1937			987, 1500	871, 1252	1392
13 (a)	(Produced at the request of the Board) Reply by Mr. Carlisle to Mr. Tracy, dated April 20, 1937			987, 1500	871, 1252	1393
14	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and International Brotherhood of Electrical Workers through its Local Union B829, dated June 15, 1937	987	871	1448	1213	1394
15	Letter from Mr. D. W. Tracy to Mr. Ganley, dated April 21, 1937			1027	903	1406
16	Notice by employees of Westchester Lighting Company that the International Brotherhood of Electrical Workers, Local B832 had become the bargaining agent for its members among the employees of Westchester Lighting Company (not printed; may					

Board's Exhibits (Continued)

Exhibit No.		Marked for Identification S. M. Page	Marked for Identification Printed Page	In evidence S. M. Page	In evidence Printed Page	Printed at Page
17	(Produced at the request of the Board) Photostat copy of the employment record of Eleanor Misbach for the months of April and May, 1937 (not printed; may be referred to in the Transcript of Record filed)	1229	1050	1230	1051	
18 (a), (b), (c)	(Produced at the request of the Board) Photostat copies of employment record of Eleanor Misbach for October and December, 1936, and February, 1937 (not printed; may be referred to in the Transcript of Record filed)			1236	1055	
19 (1)	(Produced at the request of the Board) Foreman's daily report and attached work order of May 12, 1937, as to A. Martini (not printed; may be referred to in the Transcript of Record filed)			1249	1065	
19 (2)	(Produced at the request of the Board) List of the Delegates and Officers of the Employees' Representation Plan, with their employment records, showing any overtime (not printed; may be referred to in the Transcript of Record filed)			1412	1184	
20	(Produced at the request of the Board) Summary of charges and accounts covering "general welfare—collective bargaining" and "employees' representation plan" accounts—1934-1937 (not printed; may be referred to in the Transcript of Record filed)			1433	1202	

EXHIBITS OF RESPONDENT COMPANIES (PETITIONERS HEREIN)

1	Certified copy of judgment roll filed June 2, 1937, in *Consolidated Edison Company of New York, Inc., et al.*, v. *Lamar Hardy, et al.*, District Court of the United States for the Southern District of New York, Index No. *Eq. 81-377* (not printed; may be referred to in the Transcript of Record filed)			34	160	

Note: By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification S. M. Page	Marked for Identification Printed Page	In evidence S. M. Page	In evidence Printed Page	Printed at Page
	Praecipe			34	160	
	Subpoena and Complaint			34	160	
	Special Appearance and Motion to Dismiss			34	160	
	Order of January 17, 1936, with Notice of Settlement vacating service of the subpoena in equity upon certain defendants			34	160	
	Stipulation and Order *pro confesso*, dated January 29, 1936			34	160	
	Order *pro confesso*, dated March 10, 1936			34	160	
	Order of April 14, 1936, by Honorable Henry W. Goddard, United States District Court, substituting the name of Consolidated Edison Company of New York, Inc., in place and stead of the name "Consolidated Gas Company of New York" (with affidavit on which Order was granted)			34	160	
	Decree *pro confesso*, dated October 23, 1936			34	160	
	(The above documents from the judgment-roll are not printed herein, but may be referred to in the Transcript of Record filed.)					
2	Certified copy of the Opinion of Caffey, *U.S.D.J.*, in entering the above judgment			34	160	1408
3	Notice of motion by respondent Companies, with affidavit, dated May 17, 1937, for prior and separate hearing as to jurisdiction and to dismiss complaint and charge for want of jurisdiction (Part of Board's Exhibit No. 1)					19
4	(Produced at the request of the Board) Employee rating card of Mr. William J. Kennedy (not printed; may be referred to in the Transcript of Record filed)	714	670	1523	1269	
5	(Produced at the request of the Board) Letter of Mr. John F. Emler to Mr. Frank W. Smith, dated November 20, 1936 (not printed; may be referred to in the Transcript of Record filed)			756	701	

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
6	(Produced at the request of the Board) Employee rating card of John F. Emler (not printed; may be referred to in the Transcript of Record filed)	756	701	1523	1269	
7	Verified answer on behalf of the respondent Companies to the complaint of the Board as amended as to June 14, 1937....	901	804	1501	1253	42
8	Copy of Employees' Representation Plan adopted by employees of The Bronx Gas and Electric Company (not printed; may be referred to in the Transcript of Record filed)	912	812	931	827	
9 (1)	Letter, dated July 15, 1936, from Harry J. Straub, Chairman, Third General Council of the Employees' Representation Plan of The Bronx Gas and Electric Company, to Mr. E. P. Prezzano (not printed; may be referred to in the Transcript of Record filed)			926	823	
9 (2)	Mimeographed circular requesting a vote by employees of The Bronx Gas and Electric Company on a plan of electing representatives for collective bargaining (not printed; may be referred to in the Transcript of Record filed)	920	826	930	826	
10	Printed communication to the employees of The Bronx Gas and Electric Company, dated April 11, 1934, accompanying copy of the Plan (Exhibit No. 8) (not printed; may be referred to in the Transcript of Record filed)			931	827	
11	Printed letter on the letter-head of The Bronx Gas and Electric Company, dated April 11, 1934 (not printed; may be referred to in the Transcript of Record filed)	931	828	1500	1252	
12	Form of ballot used by employees in electing tellers to conduct their vote on April 17, 1934 (not printed; may be referred to in the Transcript of Record filed)			932	828	
13	Form of ballot containing propositions voted on by the employees in the election of April 17, 1934 (not printed; may be referred to in the Transcript of Record filed)			932	829	

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification S. M. Page	Marked for Identification Printed Page	In evidence S. M. Page	In evidence Printed Page	Printed at Page
14	Enrollment blank for enrollment of employees to vote and take part in the nomination and election of representatives under the Employees' Representation Plan (not printed; may be referred to in the Transcript of Record filed)	934	830			
15	Letter of Mr. Harry J. Straub to Mr. Edward P. Prezzano, President of the Westchester Lighting Company and The Bronx Gas and Electric Company			935	831	1416
16	Membership of employees in the Local Unions of the International Brotherhood of Electrical Workers having collective bargaining contracts with Companies of the Consolidated Edison Company group of Companies			1448	1212	1418
17	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B830 (gas employees), dated June 15, 1937	1470	1229	1471	1230	1419
18	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B829 (electric employees), dated June 15, 1937 (printed as Board's Exhibit No. 14)	1470	1229	1471	1230	1394
19*	(Produced at the request of the Board) Memorandum of Agreement between Brooklyn Edison Company, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B825, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed)	1470	1229	1471	1230	
20*	(Produced at the request of the Board) Memorandum of Agreement between New York and Queens Electric Light and Power Company and the International Brotherhood of Electrical Workers, and					

* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification S. M. Page	Marked for Identification Printed Page	In evidence S. M. Page	In evidence Printed Page	Printed at Page
	its Local Union No. B839, dated June 1, 1937 (not printed; may be referred to in the Transcript of Record filed)	1470	1229	1471	1230	
21*	(Produced at the request of the Board) Memorandum of Agreement between Westchester Lighting Company and The Yonkers Electric Light and Power Company and the International Brotherhood of Electrical Workers, and its Local Union No. B832, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed)	1471	1229	1471	1230	
22*	(Produced at the request of the Board) Memorandum of Agreement between New York Steam Corporation and the International Brotherhood of Electrical Workers, and its Local Union No. B826, dated June 16, 1937 (not printed; may be referred to in the Transcript of Record filed)	1471	1229	1471	1230	
23	(Produced at the request of the Board) Memorandum of Agreement between the International Electrical Workers Union and its Local Union No. 3 (Inside Workers), and The New York Edison Company, dated January 29, 1924 (not printed; may be referred to in the Transcript of Record filed)			1495	1248	
24	Pamphlet entitled "A Call for Special Vote by All Employees of The New York Edison Company and The United Electric Light and Power Company," to be held on November 22, 1933, with copy of Plan for Collective Bargaining Through Employee Representation			1502	1254	1431
25	Letter dated June 28, 1937, to the National Labor Relations Board, from counsel for the respondent Companies			1577	1309	1463
(a)	Reply by the National Labor Relations Board, dated July 2, 1937, to the letter of June 28, 1937, from counsel for the respondent Companies			1577	1309	1467

* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.

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Certificate of the National Labor Relations Board as to Transcript

IN THE

United States Circuit Court of Appeals

For the Second Circuit

OCTOBER TERM, 1937

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, *et al.*,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. .....

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Assistant Secretary, duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board, series 1 as amended, effective April 28, 1936, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Consolidated Edison Company of New York, Inc., and its affiliated Companies Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Light-

ing Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, and United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization," the same being Case No. C-245 before said Board, such transcript including the pleadings, testimony, and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge filed by the United Electrical and Radio Workers of America, and sworn to on May 5, 1937.

2. Copy of complaint and notice of hearing issued by the National Labor Relations Board on May 12, 1937.

3. Copy of notice of special appearance for the purpose of a motion to dismiss the complaint, together with affidavit in support of motion, dated May 17, 1937.

4. Copy of amended notice of hearing dated May 25, 1937, changing date of hearing from June 1, 1937 to June 3, 1937.

5. Copy of order designating Robert M. Gates, Trial Examiner, dated May 26, 1937.

6. Copy of order denying respondent's request for hearing on motion to dismiss the complaint, dated June 2, 1937.

7. Copy of notice of motion to amend complaint issued by the National Labor Relations Board.

Certificate of the National Labor Relations Board as to Transcript

8. Copy of answer of respondents to complaint as amended June 14, 1937, verified June 16, 1937.

Documents listed hereinabove under items 1-8, inclusive, are contained in the Exhibits and included under the following item:

9. Stenographic transcript of the testimony before Robert M. Gates, Trial Examiner of the National Labor Relations Board, on June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, including all exhibits introduced in evidence.

10. Copy of order transferring proceeding to National Labor Relations Board, dated September 29, 1937.

11. Copy of decision, findings of fact, conclusions of law, and order issued by the National Labor Relations Board on November 10, 1937, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF, the Assistant Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 26th day of November, 1937.

B. M. STERN, *Assistant Secretary,*
NATIONAL LABOR RELATIONS BOARD.

SEAL

10 **Charge Filed by United Electrical and Radio Workers Affiliated with the Committee for Industrial Organization, sworn to May 3, 1937**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER
11 of
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated companies
and
UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the Committee for Industrial Organization.

12 **CHARGE**

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Consolidated Edison Company of New York, Inc. and its affiliated companies, 4 Irving Place, New York City, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subsections (1) and (2) (3) of said Act, in that

(1) on or about November 29, 1935 the New York and Queens Electric Light and Power Company a subsidiary of Consolidated Edison Company of New York, Inc. discharged Martin A. Wersing, Julius A. Greulich,

Charge Filed by United Electrical and Radio Workers Affiliated with the Committee for Industrial Organization, sworn to May 5, 1937

and Michael A. Wagner because of their membership in and activity on behalf of a labor organization of utility employees. On or about June 19, 1936, the New York and Queens Electric Light and Power Company, a subsidiary of Consolidated Edison Company of New York, Inc., discharged William J. Kennedy and John J. Emler because of their membership in and activity in behalf of a labor organization of utility employees.

(2) The Consolidated Edison Company of New York, Inc. and its controlled and directed affiliates have since March 1, 1937 interfered with the right of its employees to form, join or assist labor organizations of their own choosing and to engage in other concerted activities by contributing financial and other support to the International Brotherhood of Electrical Workers by allowing I. B. E. W. meetings to be held during working hours and on company premises, by allowing supervisors, foremen, and other employees of the company during working hours to solicit membership in the I. B. E. W. by giving foremen, supervisors, and other employees overtime allowances while they were engaged in coercing employees of the company to joint the I. B. E. W., by persuading and coercing employees of the company under threat of discharge to disaffiliate from labor organizations of their own choosing and to join the I. B. E. W.

(3) The Consolidated Edison Company of New York, Inc. and its controlled and directed affiliates have since July 5, 1935 and still do employ industrial spies to ferret out union activity of its employees for the purpose of discriminating against such employees, thereby discouraging membership in labor organizations and interfering with the right of employees to form, join or assist labor organizations.

16 *Charge Filed by United Electrical and Radio Workers Affiliated with the Committee for Industrial Organization, sworn to May 5, 1937*

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

17 United Electrical and Radio Workers of America, Loc. 1212 affiliated with the Committee for Industrial Organization, 3 Albee Street, Brooklyn, N. Y. (Cumberland 6-7444.)

by: MARTIN A. WERSING,
President, Local 1212.

(Sgd) MARTIN A. WERSING.

Subscribed and sworn to before me this 5 day of May, 1937.

ALBERT L. PAGAN,
18 *Notary Public,*
New York County No. 8.
New York Co. Register's No. 8 F-195.
My Commission expires March 30, 1938.
(Seal)

Complaint and Notice of Hearing Issued by National Labor Relations Board on May 12, 1937

United States of America
Before the
National Labor Relations Board
Second Region

In the Matter
of
Consolidated Edison Company of New York, Inc., and its affiliated Companies, Brooklyn Edison Company, Inc., New York & Queens Electric Light & Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph & Electrical Subway Company,
Respondents,
and
United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization.

Complaint

It having been charged by the United Electrical and Radio Workers of America, affiliated with the Committee

Note: The text shows the Complaint as first filed and served. The various amendments allowed from time to time during the hearings and at their close are shown as *foot-notes.*

for Industrial Organization, that the Consolidated Edison Company of New York, Inc., and its affiliated companies, Brooklyn Edison Company, Inc., New York & Queens Electric Light & Power Company; Westchester Lighting Company; The Yonkers Electric Light and Power Company; New York Steam Corporation, and the Consolidated Telegraph & Electrical Subway Company, hereinafter called the respondents, have been engaged in and are now engaging in certain unfair labor practices
23 affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Second Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, Section 1, hereby alleges the following:

1. The Consolidated Edison Company of New York, Inc., is and has been since March 23, 1936, a corporation organized under and existing by virtue of the laws of the State of New York, having its principal office and
24 place of business in the city, county, and state of New York and is now and has been continuously engaged in said city in the manufacture, distribution, and sale of electricity, gas and steam.

2. The Consolidated Edison Company of New York, Inc., was until March 23, 1936, known as Consolidated Gas Company of New York, a corporation organized on or about November 10, 1884, and existing by virtue of the laws of the State of New York, having its office and principal place of business in the city, county, and state of New York.

3. The Brooklyn Edison Company, Inc., is and has been since December 21, 1918, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of

business in the county of Kings, city and state of New York, more than 98 per centum of the common stock of which is owned by Consolidated Edison Company of New York, Inc.

4. The New York & Queens Electric Light & Power Company, is and has been since July 21, 1900, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the county of Queens, city and state of New York, 98 per centum of the common stock of which is owned by Consolidated Edison Company of New York, Inc.

5. The Westchester Lighting Company, is and has been since November 5, 1900, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the county of Westchester, state of New York, all of the common stock of which is owned by the Consolidated Edison Company of New York, Inc.

6. The Yonkers Electric Light and Power Company, is and has been since May 24, 1892, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the county of Westchester, state of New York, all of the common stock of which is owned by the Consolidated Edison Company of New York, Inc.

7. The New York Steam Corporation, is and has been since July 15, 1921, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the city, county and state of New York, 58 per centum of the common stock of which is owned by the Consolidated Edison Company of New York, Inc.

8. The Consolidated Telegraph & Electrical Subway

Complaint and Notice of Hearing Issued by National Labor Relations Board on May 12, 1937

Company, is and has been since December 29, 1933, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the city, county and state of New York, 99 per centum of the common stock of which is owned by the Consolidated Edison Company of New York, Inc.

9. All of the operations of the corporations described above in paragraphs "3" to "8" inclusive, including their labor policies, are wholly directed and controlled by the Consolidated Edison Company of New York, Inc., and all of the corporations so described together with said Consolidated Edison Company of New York, Inc., form a unified and integrated system wholly controlled and directed by said Consolidated Edison Company of New York, Inc.

10. The respondents, jointly and severally, in the course and conduct of their business, as aforesaid, cause and have continuously caused substantially all of the coal, oil and other essential raw materials, used in the production and transmission of electricity, gas and steam, to be purchased and transported in interstate commerce from and through the states of the United States, other than the State of New York to their various plants in the city of New York.

11. The electric generating and transmission systems of the respondents are and since 1932 have been physically interconnected with the electric generating and transmission system of the Niagara Hudson Power Corporation, a corporation organized and existing under the laws of the state of New York, the electric generating and transmission system of which is in turn interconnected with electric generating and transmission systems in the Dominion of Canada, and the respondents have since 1932 been purchasing electricity from, and

selling electricity to, the Niagara Hudson Power Corporation, which in turn have been purchasing electricity from and selling electricity to electric power corporations in the Dominion of Canada, thereby the respondents buy, sell and exchange, electricity with electric power corporation in the Dominion of Canada.

12. The respondents jointly and severally cause and continuously have caused a major part of the by-products, such as coke, ammonium sulphate and coal tar, resulting from the production of electricity, gas and steam to be sold and transported in interstate commerce into and through the states of the United States other than the state of New York from their plants in the state of New York.

13. The respondents jointly and severally sell electricity to the New York Central Railroad Company, the New York, New Haven and Hartford Railroad Company and other interstate railroad carriers, which electricity is used by said interstate railroad carriers to operate their trains and to operate facilities necessary to the operation of their interstate transportation system in interstate commerce.

14. The respondents jointly and severally are the sole suppliers of electric current in the City of New York (with the exception of the county of Richmond) and sell electricity to various individuals, partnerships and corporations having their offices and plants in New York City which are engaged in and constitute instrumentalities of interstate commerce and which produce or transmit radio broadcasts, telephonic communications, telegrams, newspapers and other products moving in interstate commerce.

15. The respondents jointly and severally sell electricity to various branches of the Post Office located in

New York City and to other governmental authorities by the operation of tunnels, docks, bridges and highways, which act as arteries for the flow of interstate commerce to and from the state of New York.

16. The electricity, gas and steam sold by the respondents to the hereinabove described purchasers and the other activities of the respondents have a close, intimate and substantial relationship to trade, traffic and commerce among the several states and are an integral part of the flow of trade, traffic and commerce along the instrumentalities of interstate commerce and are an integral part of the flow of trade, traffic and commerce among the several states and with foreign countries.

17. The respondents jointly and severally by their officers and agents, while engaged in the operations hereinabove described, employ and have employed industrial spies or undercover operatives for the purpose of disclosing to the respondents the activities of their employees in and on behalf of labor organizations, thereby interfering with the right of their employees to form, join or assist labor organizations of their own choosing or to engage in concerted activities for their mutual aid and protection and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1), of the National Labor Relations Act.

18. The respondents jointly and severally, by their officers and agents, on or about November 29, 1935, discharged and refused to reinstate Martin A. Wersing, Julius A. Greulich and Michael A. Wagner, employees of the respondents, and each of them for the reason that they joined and assisted a labor organization known as Brotherhood of Utility Employees, Local 103, and engaged with other employees of the respondents in concerted activities for their mutual aid and protection.

Complaint and Notice of Hearing Issued by National Labor Relations Board on May 19, 1937

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19.* The respondents jointly and severally by their officers and agents, on or about June 19, 1936, discharged and refused to reinstate William J. Kennedy and John J. Emler,* employees of the respondents, and each of them, for the reason that they engaged with other employees of the respondents in concerted activities for their mutual aid and protection.

20.* By their discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy and John J. Emler,* and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

38

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*On June 9, 1937, counsel for the National Labor Relations Board served upon counsel for the respondent Companies the following notice:

PLEASE TAKE NOTICE:

That the undersigned will move to amend the complaint in the above-entitled proceeding at the hearing to be conducted by the National Labor Relations Board, by a Trial Examiner, on the 10th day of June, 1937, in the following respects:

39

(1) Paragraph 19 will be amended to read as follows: "The respondents, jointly and severally, by their officers and agents on or about January 17, 1936 discharged and refused to reinstate Stephen L. Solosy; and on or about June 19, 1936 discharged and refused to reinstate William J. Kennedy and John J. Emler, employees of the respondents, and each of them, for the reason that they engaged with other employees of the respondents in concerted activities for their mutual aid and protection."

(2) Paragraph 20 will be amended to read as follows: "By their discharge of said Martin A. Gersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act."

(3) Paragraph 21 will be amended to read as follows: "By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A.

Complaint and Notice of Hearing Issued by National Labor Relations Board on May 13, 1937

21.* By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, and John J. Emler,* and each of them, as set forth above, the respondents did discriminate and are discriminating in regard to the hire and tenure of employment of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy and John J. Emler,* and each of them, and did discourage and are discouraging membership in or assistance to labor organizations, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the National Labor Relations Act.

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*On June 9, 1937, counsel for the National Labor Relations Board served upon counsel for the respondent Companies the following notice:

PLEASE TAKE NOTICE:

That the undersigned will move to amend the complaint in the above-entitled proceeding at the hearing to be conducted by the National Labor Relations Board, by a Trial Examiner, on the 10th day of June, 1937, in the following respects:

(1) Paragraph 19 will be amended to read as follows: "The respondents, jointly and severally, by their officers and agents on or about January 17, 1936 discharged and refused to reinstate Stephen L. Solosy; and on or about June 19, 1936 discharged and refused to reinstate William J. Kennedy and John J. Emler, employees of the respondents, and each of them, for the reason that they engaged with other employees of the respondents in concerted activities for their mutual aid and protection."

(2) Paragraph 20 will be amended to read as follows: "By their discharge of said Martin A. Gersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act."

(3) Paragraph 21 will be amended to read as follows: "By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents did discriminate and are discriminating in regard to the hirt and tenure of employment of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, and did discourage and are discouraging membership in or assistance to labor organizations, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the National Labor Relations Act."

(Signed) DAVID A. MOSCOVITZ
DAVID A. MOSCOVITZ
Regional Attorney
Second Region.

On June 10, 1937, the above-stated amendments of the complaint were allowed by the Trial Examiner (S. M. 39).

22. The respondents jointly and severally by their officers and agents have, since April 12, 1937, interfered, and are interfering with, restraining and coercing their employees in the exercise of their right to form, join, or assist labor organizations of their own choosing and are contributing financial or other support to the International Brotherhood of Electrical Workers by (1) allowing employees of the respondents to solicit membership in said labor organization during working hours and on the respondents' property, (2) compensating such employees while engaged in such solicitation, (3) furnishing office space and other financial assistance to such solicitors; while refusing such privileges or assistance to the United Electrical Radio Workers of America, Local 1212; and by coercing their employees to join or assist the International Brotherhood of Electrical Workers, and did thereby and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) and (2) of the National Labor Relations Act.

23.* The activities of the respondents set forth above in paragraphs "16" to "21,"* inclusive, occurring in connection with the operations of respondents described above in paragraphs "1" to "16," inclusive, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes hindering and obstructing commerce and the free flow of commerce.

24.* The aforesaid acts of the respondent enumerated above in paragraphs "16" to "21,"* inclusive, constitute

* The figure "21" was permitted to be changed to "22" in each of these two paragraphs, by amendments allowed on June 14, 1937 (S. M. 364-365, 523).

46 *Complaint and Notice of Hearing Issued by National Labor Relations Board on May 12, 1937*

unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1), (2) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

WHEREFORE the NATIONAL LABOR RELATIONS BOARD on the 12th day of May, 1937 issues its complaint against the Consolidated Edison Company of New York, Inc., and its affiliated companies, Brooklyn Edison Company, 47 Inc., New York & Queens Electric Light & Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph & Electrical Subway Company, respondents herein.

Notice of Hearing

PLEASE TAKE NOTICE that on the 1st day of June, 1937, at ten o'clock in the forenoon, at 45 Broadway, New York, New York, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and 48 Regulations, Series I, Article IV, and Article II, Section 23, on the allegations set forth in the complaint, attached hereto, at which time and place you will have the right to appear in person or otherwise and give testimony.

You are further notified that you have the right to file with the Regional Director for the Second Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto within five (5) days from the date of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series I, made and published by the National Labor Relations Board pursuant to authority granted by the National Labor Relations Act. Your

Acknowledgments and Proofs of Service of the Complaint and Notice of Hearing

attention is particularly directed to Article II of said Rules and Regulations.*

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its complaint and notice of hearing, to be signed by the Regional Director for the Second Region on the twelfth day of May, 1937.

ELINORE MOREHOUSE HERRICK,
Regional Director for the Second Region,
45 Broadway,
New York, New York.

Acknowledgments and Proofs of Service of the Complaint and Notice of Hearing

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its subsidiaries and affiliates and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, LOCAL 1212.	Case II-C-224

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

SADIE JACOBS, Stenographer, Second Region, being duly sworn deposes and says that on the 12th day of

* Copy of Rules and Regulations not printed here; may be referred to in Transcript of Record filed.

Acknowledgments and Proofs of Service of the Complaint and Notice of Hearing

May, 1937, as agent for the National Labor Relations Board, she served upon Westchester Lighting Company at 9 South 1st Avenue, Yonkers, New York; upon Brooklyn Edison Co., Inc., at 380 Pearl Street, Brooklyn, New York; upon New York & Queens Electric Light & Power Co., at 26—19 Bridge Plaza North, Long Island City, New York; upon Consolidated Telegraph & Electric Subway, 54 Lafayette Street, New York, New York; upon Yonkers Electric Light & Power Company, 45 South Broadway, Yonkers, New York; and upon New York Steam Corporation, 4 Irving Place, New York, New York; in the above-entitled matter by sending on that date to the foregoing named corporations at the addresses indicated, by postpaid registered mail, return receipt requested, a complaint and notice of hearing in the above-entitled matter, dated May 12, 1937; that she did receive therefor from the United States Post Office (Station City Hall Annex), New York, N. Y., Receipts for Registered Articles, dated May 12, 1937, and numbered 312266, 312267, 312268, 312269, 312270, and 312271, respectively, said receipts being attached hereto, marked Exhibit A, and made a part hereof.

SADIE JACOBS.

Subscribed and sworn to before me this 14th day of May, 1937.

ALBERT L. FAGER,
Notary Public, New York County No. 8; New York Co. Register's No. 8F-195. My Commission expires March 30, 1938.

(Seal)

[Copies of United States Post Office "Receipt for Registered Article" omitted; no "Return Receipts" for registered mail delivery were included in the Transcript of Record filed.]

A Western Union Telegraph Company "Messenger Errand Service Ticket" included in the filed Transcript is as follows:

CHARGE TO U S GOVT NATIONAL LABOR RELATIONS BOARD

THE WESTERN UNION TELEGRAPH COMPANY

MESSENGER ERRAND SERVICE TICKET

ORDER NO. 3509

OFFICE CT DATE 19

TIME SENT 957 MAY 12 AM 10 01

TIME RETURNED 957 MAY 12 AM 10 01

TOTAL NUMBER OF STOPS (INCLUDING ORIGINAL)	DELIVERY TO BE MADE		ARTICLES	CHARGE'S INITIALS	TIME	
	SIGNED	ADDRESSEE			MAY.	APPT.
95F 9F	☐	☐	15	WK	89	2

CALLED BY ABOVE

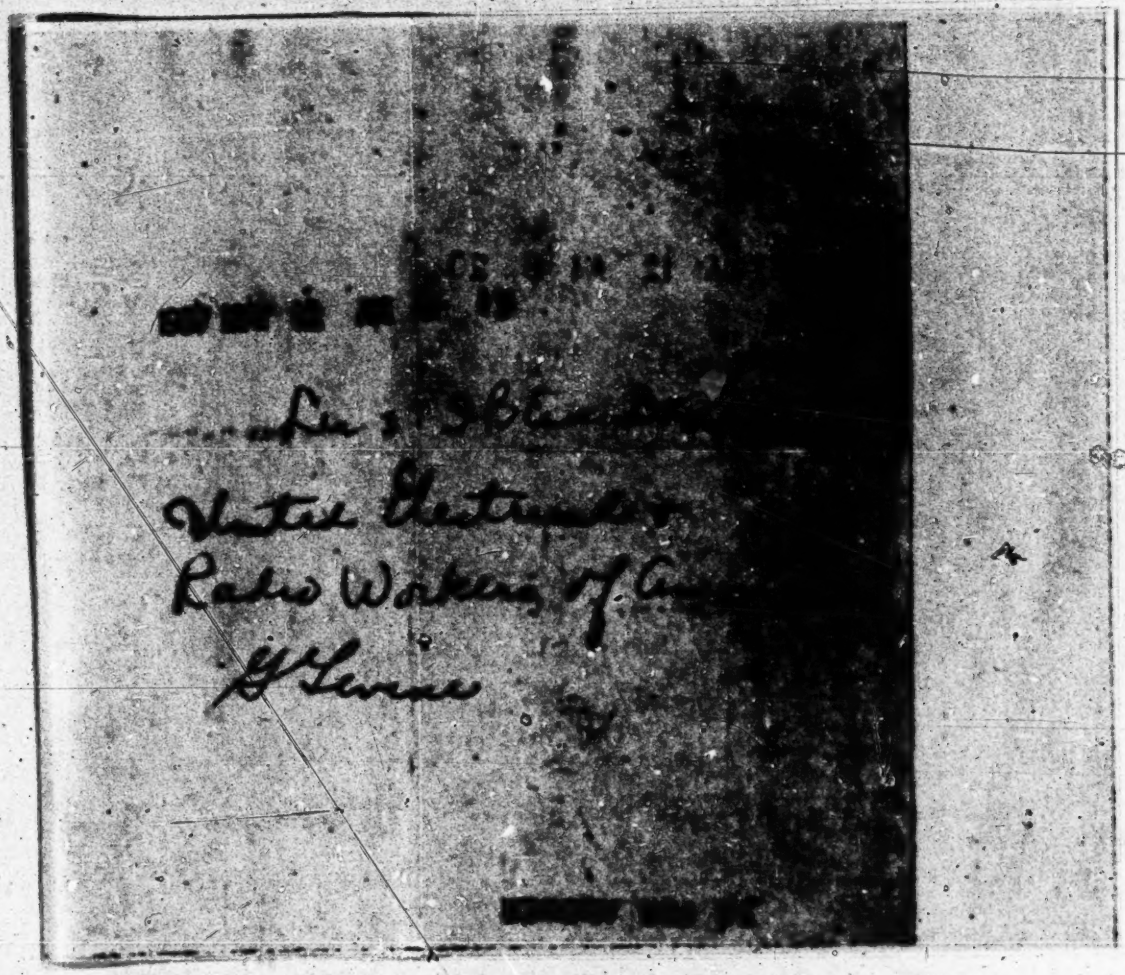
WHERE SENT (CHANGE) UNITED ELEC RADIO WORKERS 1133
INTL BROTHERHOOD ELEC WORKERS 103E25

STREET AND NO. CONSOLIDATED EDISON CO 3 IRVING PLACE

ARTICLES SENT 3 PACKAGES C. O. D. $

CHARGE CONSOLIDATED EDISON COMPANY OF [illegible] (Including C.O.D. CHARGES, IF ANY)
4 IRVING PLACE, N. Y. C.

Charges are Based Solely on Time Messenger is Used, During which Time the Messenger is Subject to the Direction and Control of Customer.



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Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, BROOKLYN EDISON COMPANY, INC., NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY, Respondents, and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.	Case No. II-C 224

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57

PLEASE TAKE NOTICE, that the above-named respondents, appearing specially and only for the purposes of the motions hereinafter set forth, hereby jointly and severally move that the Board dismiss the complaint and charge herein and terminate the proceeding, upon the grounds that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or

Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction

over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "commerce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York, and not of the Federal Government, and that the Legislature of the State of New York has, upon the recommendation of The Governor, passed an Act entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor", by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

This motion is made by the respondents upon the complaint and charge, without admitting the truth or sufficiency of any of the allegations thereof, and upon the annexed affidavit, sworn to May 17, 1937, by Oscar H. Fogg, Vice-Chairman of the Board of Trustees of the respondent Consolidated Edison Company of New York, Inc.

The respondents respectfully ask that the Board grant a hearing upon this motion, and that the motion be ruled upon and determined, before a hearing is held upon the complaint served on the respondents on May 12, 1937.

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Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction

The respondents, appearing only specially as above stated, move further that the Board order that the complaint and charge herein, and all proceedings instituted in respect thereto, including the motion above made, be transferred to and continued before the Board, in Washington, D. C., for the reasons that this case involves a highly important issue as to the applicability of the National Labor Relations Act (48 Stat. 449) to the operations of the respondents in local and intra-state production, transmission, distribution, sale or delivery of electricity, gas or steam, or in the furnishing locally of intra-state facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such operations, and that the importance of the issue, not only to the interested parties but to the public, warrants and requires that the hearing and decision of this motion and any further proceedings herein be directly by the Board.

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The respondents, appearing only specially as above stated, move further that the Board extend their time to answer the complaint herein to five days after the final determination of this motion, and that any hearing upon such complaint set down to be held by and before the Trial Examiner on June 1, 1937, or by and before the Board, shall be adjourned and shall not be held until at least ten days after the final determination of this motion.

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Dated, New York, May 17, 1937.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

By

O. H. Fogg,

Vice Chairman

Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act."

(3) Paragraph 21 will be amended to read as follows: "By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents did discriminate and are discriminating in regard to the hire and tenure of employment of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, and did discourage and are discouraging membership in or assistance to labor organizations, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the National Labor Relations Act."

(Signed) DAVID A. MOSCOVITZ
DAVID A. MOSCOVITZ
Regional Attorney
Second Region

On June 10, 1937, the above-stated amendments of the complaint were allowed by the Trial Examiner (S. M. 39).

64 *Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction*

BROOKLYN EDISON COMPANY, INC.,
By
A. AUGUSTUS LOW
Exec. Vice Pres.

NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY
65 By
L. A. COLEMAN
Vice Pres't

WESTCHESTER LIGHTING COMPANY
By
E. P. PREZZANO
President

THE YONKERS ELECTRIC LIGHT AND POWER COMPANY
By
66 E. P. PREZZANO
President

NEW YORK STEAM CORPORATION
By
DAVID C. JOHNSON
President

CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY
By
E. S. CALLAHAN
President

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Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction

To:

MRS. ELINORE MOREHOUSE HERRICK,
Regional Director for the Second Region,
45 Broadway,
New York, N. Y.

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UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, LOCAL 1212 affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION
3 Albee Square,
Brooklyn, N. Y.

WHITMAN, RANSOM, COULSON & GOETZ,
Attorneys for Respondents,
No. 40 Wall Street,
New York City.

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Affidavit in Support of Motion by Respondent Companies (Petitioners Herein) to Dismiss Complaint

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER of 71 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, BROOKLYN EDISON COMPANY, INC., NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY, Respondents, 72 and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.	Case No. II-C 224

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

OSCAR H. FOGG, being duly sworn, deposes and says:

1. I am the Vice-Chairman of the Board of Trustees of the respondent Consolidated Edison Company of New York, Inc., and am the Vice-Chairman or a member of the

Affidavit in Support of Motion by Respondent Companies (petitioners herein) to Dismiss Complaint

Board of Directors of each of the affiliated Companies also named as respondents in the above-entitled proceeding, and am familiar with the matters and things therein involved. This affidavit is submitted in behalf of each of the named respondents, in support of their motion to dismiss the complaint herein and for the further relief asked therein.

2. The respondents have appeared specially in this proceeding, for the sole purpose of moving jointly and severally to dismiss the complaint and charge herein and terminate the proceeding, upon the grounds, stated in their notice of motion, that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "commerce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York, and not of the Federal Government, and that the Legislature of the State of New York has, upon the recommendation of The Governor, passed an Act entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor", by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

76 *Affidavit in Support of Motion by Respondent Companies (petitioners herein) to Dismiss Complaint*

RESPONDENTS ARE ENGAGED ONLY IN LOCAL OPERATIONS

3. Each of the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, and New York Steam Corporation, is a local operating public utility company, organized and existing under the laws of the State of New York, engaged in supplying utility service to the public within the City of
77 New York. The respondents Westchester Lighting Company and The Yonkers Electric Light and Power Company are local operating public utility companies, organized and existing under the laws of the State of New York engaged in supplying utility service to the public within Westchester County. The respondent Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State, engaged in carrying on business wholly within the City of New York.

4. Each of the respondents (except the Consolidated Telegraph and Electrical Subway Company) is subject
78 to the regulatory jurisdiction and powers of the Public Service Commission of the State of New York in the respects provided by law, and is generally subject to the regulatory jurisdiction and supervision of the State of New York.

RESPONDENTS' OPERATIONS ARE WHOLLY INTRA-STATE

5. The respondent public utility Companies transmit, distribute, sell or deliver electricity, gas or steam to customers within the State of New York, and do not transmit, distribute, sell or deliver electricity, gas or steam in interstate commerce or across any State line.

Affidavit in Support of Motion by Respondent Companies (petitioners herein) to Dismiss Complaint

The production, transmission, distribution, sale and delivery of such electricity, gas or steam, by the respondents, take place wholly within the State of New York. All of the manufacturing plants of the respondents and all of their facilities for transmission, distribution and delivery of electricity, gas or steam, as well as their offices and other operating properties, are situated within the State of New York, and are operated and used exclusively within the State of New York. None of the respondents transmits, distributes, sells or delivers electricity, gas or steam that was generated outside the State of New York or that has crossed any State line. The system and lines of the respondents are not interconnected with the lines of any corporation supplying electricity, gas or steam which has crossed any State line.

6. Reference is made in the complaint to a physical interconnection between the electric system and lines of the respondents and the electric system and lines of the New York Power and Light Corporation, one of the Companies of the Niagara Hudson Power Corporation. None of the respondents, however, thereby receives electric energy from, or sells electric energy to, any corporation which receives electric energy from a generating or transmission system in the Dominion of Canada or anywhere outside the State of New York and which transmits or distributes electric energy of such foreign or outside origin. I am informed and believe that the New York Power and Light Corporation does not receive, transmit or sell any electricity generated outside the State of New York.

7. Reference is made in the complaint to electricity supplied by the respondents to the New York Central

Railroad Company. Such energy is transmitted and delivered by one of the respondents to the New York Central Railroad Company wholly within the State of New York, and is used by the Railroad Company wholly within the State of New York. Electricity which is supplied by one of the respondents to the New York, New Haven and Hartford Railroad Company and other interstate carriers is likewise transmitted and delivered by such respondent wholly within the State of New York.

83 8. Reference is made in the complaint to the respondents' production and disposal of various by-products, such as coke, ammonium sulphate, and coal tar. Such by-products are manufactured wholly within the State of New York and are sold and delivered by the respondents within the State of New York, and none of the respondents transports them or causes them to be transported in interstate commerce.

9. Reference is made in the complaint to the fact that the respondents supply and deliver locally electricity, gas and steam to various concerns which are or may be themselves engaged in interstate commerce or
84 communication. But the supply and delivery of such service to such concerns take place wholly within the State of New York, and the respondents do not participate in any interstate activities of such concerns. Although some of the materials and commodities used by some of the respondents locally are purchased in other States and are shipped to such respondents in interstate commerce, they are not used by such respondents in interstate commerce.

10. As used in the National Labor Relations Act (48 Stat. 449), under the definition in Section 2(6), the term "commerce" means

"trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

I am advised by counsel, and verily believe, that the labor practices of the respondents, alleged in the complaint and otherwise, do not affect, burden or interfere with "commerce" as defined in the National Labor Relations Act.

Respondents Have Been Authorized to Be Engaged Exclusively in Intra-State Business and to Do Nothing Which Burdens or Affects Interstate Commerce

11. In an action brought by the Consolidated Edison Company of New York, Inc., and other affiliated Companies, in the United States District Court for the Southern District of New York, to obtain an adjudication as to the applicability or validity, as to them, and to enjoin the enforcement against them of the provisions and requirements of the Public Utility Holding Company Act of 1935, the defendant representatives of the Government of the United States did not deny the allegations of the bill of complaint or contest the right of the plaintiffs to a final decree in their favor. In entering a decree *pro confesso* as to the inapplicability of the

Affidavit in Support of Motion by Respondent Companies (petitioners herein) to Dismiss Complaint

Federal statute to victims of the respondents here, the United States District Court, per Caffey, D.J., referred on July 30, 1936, to the "suppression" by the Government

> "that the corporate plaintiffs are engaged exclusively in intra-State business and do nothing which directly burdens or affects interstate or foreign commerce."

Final decree was entered accordingly; the Government of the United States took no appeal from such decree; and the time to appeal therefrom has expired.

RESPONDENTS ARE SUBJECT ONLY TO THE JURISDICTION AND LAWS OF THE STATE OF NEW YORK IN LABOR MATTERS

12. The respondents do not make their motion to dismiss the complaint for want of jurisdiction in the National Labor Relations Board, because of any desire or purpose to avoid or escape all governmental supervision of their labor practices. The Legislature of the State of New York, upon the recommendation of The Governor, has passed a bill identified as Assembly Introductory No. 2482, Print No. 3348, entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor." This Act is to be known as the "New York State Labor Relations Act". This Act, when approved by The Governor, will take effect July 1, 1937, and will subject the respondents as local, intra-State

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concerns to supervision and regulation by the New York State Labor Relations Board, authorized for the purpose of exercising, as to such intra-state concerns, supervisory powers and jurisdiction similar to that possessed by the National Labor Relations Board as to interstate concerns. The granting of the present motion to dismiss the complaint would avoid a duality, if not conflict, of jurisdiction, and keep within State jurisdiction and supervision the matters which are essentially local in their nature and scope.

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13. In behalf of the respondents, I submit most respectfully that the orderly determination of labor disputes will be promoted, in the public interest, if all such matters affecting the respondents are left to the governmental powers and authority of the State of New York and to the jurisdiction and powers of the Labor Relations Board of the State of New York, authorized to be created by the New York State Labor Relations Act, inasmuch as the respondents' operations are wholly within that State and are broadly subject in other respects to the regulation and supervision of the laws of the State of New York.

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THE COMPLAINT AND CHARGE ARE WITHOUT MERIT

14. The complaint contains various allegations derived from a charge filed in behalf of a purported labor organization affiliated with the Committee for Industrial Organization. Should the respondents be called upon to answer the complaint by and before a board which has jurisdiction of such matters, the respondents will show that the allegations of the charge are without foundation in fact and wholly without merit. The termination of employment of certain employees mentioned in the com-

plaint took place partly in November of 1935 and partly in July of 1936. None of the persons named was discharged because of his membership or non-membership in any labor organization. In any event, none of the matters alleged has since caused, or is likely to now cause, any interruption of the respondents' service to the public, or any obstruction of or impediment to the normal flow of commerce as defined in the Act. The termination of employment of a few employees, in November of 1935 and July of 1936, in the exercise of the managerial powers and responsibilities of one of the respondent Companies operating solely within the City of New York, could not possibly constitute or create any grounds for a present assumption of jurisdiction by the National Labor Relations Board.

15. I am advised and believe that this proceeding and the respondents' motions present a highly important issue as to the applicability of the National Labor Relations Act (48 Stat. 449) to the operations of the respondents in local and intra-state production, transmission, distribution, sale or delivery of electricity, gas or steam, or in the furnishing locally of intra-state facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such operations, and that the importance of the issue, not only to the interested parties but to the public, warrants and makes advisable the hearing and decision of this motion and of any further proceedings herein, directly by the Board. The respondents accordingly move the Board that the complaint and charge herein, the respondents' motion to dismiss for want of jurisdiction, and any further proceedings in respect thereto, be transferred to and continued before the Board, in Washington, D. C.

Affidavit in Support of Motion by Respondent Companies (petitioners herein) to Dismiss Complaint

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WHEREFORE, in behalf of each of the respondents appearing specially for the purposes of such a motion, I respectfully ask that the complaint and proceeding herein be dismissed, as to each of the respondents, upon each of the grounds stated in the notice of motion, and also that they be granted the further relief asked for in the annexed notice of motion.

O. H. FOGG.

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Subscribed and sworn to before me
this 17th day of May, 1937.

MARION SEITZ.

Marion Seitz
Notary Public, New York County
Clerk's No. 657, Register's No. 9-S-632.
Commission Expires March 30, 1939

(SEAL)

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100 Amended Notice of Hearing by Board, Dated May 5, 1937

PLEASE TAKE NOTICE that on the third day of June, 1937, at ten o'clock in the forenoon, at The Auditorium of the New York County Lawyers Association, at 14 Vesey Street, New York, New York, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner, designated by it in accordance with its Rules and Regulations, Series 1, as amended, Article IV, and Article II, Section 23, on the allegations set forth in the Complaint in the matter of Consolidated Edison Company of New York, Inc., and its affiliated
101 Companies, Brooklyn Edison Company, Inc.; New York & Queens Electric Light & Power Company; Westchester Lighting Company; The Yonkers Electric Light and Power Company; New York Steam Corporation; Consolidated Telegraph & Electrical Subway Company, and United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization, case II-C-224, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

The foregoing paragraph is hereby substituted for
102 the first paragraph in the Notice of Hearing issued by the Regional Director for the Second Region, under date of May 12, 1937.

IN WITNESS WHEREOF the National Labor Relations Board has caused this substitution and amendment of Notice of Hearing to be signed by the Regional Director for the Second Region on the 25th day of May, 1937.

ELINORE MOREHOUSE HERRICK,
Regional Director for the Second Region,
National Labor Relations Board,
45 Broadway, New York City.

Affidavit of Service of Amended Notice of Hearing 103

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated companies and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA.	II-C-224

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

ALAN JOYCE MACADAMS, Clerk-Stenographer, Second Region, being duly sworn, deposes and says that on the 25th day of May, 1937, as agent for the National Labor Relations Board, he served upon:

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Westchester Lighting Co., 9 South First Avenue, Yonkers, N.Y.

International Brotherhood of Electrical Workers, 130 East 25 Street, N.Y.C.

New York Steam Corporation, 4 Irving Place, N.Y.C.

Yonkers Electric Light & Power Company, 45 South Broadway, Yonkers, N.Y.

Consolidated Telegraph & Electric Subway, 54 Lafayette Street, N.Y.C.

N. Y. & Queens Elec. Light & Power Co., 28-19 Bridge Plaza North, L. I. C., N.Y.

Brooklyn Edison Company, Inc., 380 Pearl Street, Brooklyn, N.Y.

Affidavit of Service of Amended Notice of Hearing

Robert H. Coulson, Esq., 40 Wall Street, N.Y.C.
Consolidated Edison Co. of N. Y., Inc., 4 Irving Place, N.Y.C.

in the above-entitled matter, by sending on that date to the foregoing named parties at the addresses indicated, by postpaid registered mail, return receipt requested, an AMENDED NOTICE OF HEARING in the above-entitled matter, dated May 25, 1937; that he did receive therefor from the United States Post Office (City Hall Annex), New York, New York, Receipts for Registered Articles, dated May 25, 1937, and numbered 303160, 303161, 303162, 303163, 303164, 303165, 303166, 303167 and 303168, respectively; said receipts being attached hereto and marked Exhibit A and made a part hereof.

Alan Joyce MacAdams also swears that he did post in the regular mail, by placing in the U. S. Mail Chute at 45 Broadway, New York, N. Y., a like Amended Notice of Hearing, addressed to United Electrical and Radio Workers of America, at 1133 Broadway, New York City.

ALAN J. MACADAMS.

Subscribed and sworn to before me this 25th day of May, 1937.

SADIE JACOBS
SADIE JACOBS, *Notary Public*
Bronx Co. Clk. No. 34, Reg. No. 40-J-38
N. Y. Co. Clk. No. 210
N. Y. Co. Reg. No. 8-J-138
Commission Expires March 30, 1938
[SEAL]

[Copies of United States Post Office "Receipt for Registered Article" omitted; no "Return Receipts" for registered mail delivery are included in the Transcript of Record filed.]

Order of the Board Dated May 26, 1937, designating Mr. Robert M. Gates, Trial Examiner of the Board, to Conduct the Hearing

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 26th day of May, 1937.

Present:

J. WARREN MADDEN, *Chairman*
DONALD WAKEFIELD SMITH
EDWIN S. SMITH

IN THE MATTER of CONSOLIDATED EDISON COMPANY, INC., and its affiliated companies, and UNITED ELECTRICAL & RADIO WORKERS OF AMERICA, LOCAL NO. 1212, C.I.O.	Case No. II-C-224

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the Second Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that Robert M. Gates act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

By direction of the Board:

BENEDICT WOLF,
Secretary.

112 Order of the Board dated June 2, 1937, Denying the Request of the Respondent Company for a Prior and Separate Hearing on Their Motion to Dismiss the Complaint for Want of Jurisdiction

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office
113 in the City of Washington, D. C., on the 2nd day of June, 1937.

Present:

DONALD WAKEFIELD SMITH
EDWIN S. SMITH

IN THE MATTER OF	
114 CONSOLIDATED EDISON COMPANY, INC., and its affiliated companies,	Case No. II-C-224
and	
UNITED ELECTRICAL & RADIO WORKERS OF AMERICA, LOCAL No. 1212, C.I.O.	

A complaint having been duly issued in the above matter alleging that respondent has engaged in certain unfair labor practices within the meaning of Section 8 of the National Labor Relations Act, and thereafter respondent having filed a motion to dismiss the complaint

Order of the Board Dated June 2, 1937, Denying the Request of the Respondent Companies for a Prior and Separate Hearing on Their Motion to Dismiss the Complaint for Want of Jurisdiction

and having requested a hearing on said motion before hearings held upon the complaint, and the Board having duly considered the matter,

IT IS HEREBY ORDERED that the respondent's request for a hearing on the motion to dismiss the complaint before any hearing is held on the complaint be and hereby is denied.

By direction of the Board:

BENEDICT WOLF,
Secretary.

(Seal of National Labor Relations Board)

110 Notice of Motion by the Board to Amend the Complaint
(served on the respondent Companies June 8, 1937)

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, BROOKLYN EDISON COMPANY, INC., NEW YORK & QUEENS ELECTRIC LIGHT & POWER CO., WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT & POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY CO., *Respondents*, and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the Committee for Industrial Organization.	Case II-C-224

PLEASE TAKE NOTICE:

That the undersigned will move to amend the complaint in the above-entitled proceeding at the hearing to be conducted by the National Labor Relations Board, by a Trial Examiner, on the 10th day of June, 1937, in the following respects:

Notice of Motion by the Board to Amend Its Complaint 121
(served on the respondent Companies June 9, 1937)

1) Paragraph 19 will be amended to read as follows: "The respondents, jointly and severally, by their officers and agents on or about January 17, 1936 discharged and refused to reinstate Stephen L. Solosy; and on or about June 19, 1936 discharged and refused to reinstate William J. Kennedy and John J. Emler, employees of the respondents, and each of them, for the reason that they engaged with other employees of the respondents in concerted activities for their mutual aid and protection."

2) Paragraph 20 will be amended to read as follows: 122
"By their discharge of said Martin A. Gersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

3) Paragraph 21 will be amended to read as follows: 123
"By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents did discriminate and are discriminating in regard to the hire and tenure of employment of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, and did discourage and are discouraging membership in or assistance to labor organizations, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the National Labor Relations Act.

DAVID A. MOSCOWITZ
David A. Moscowitz
Regional Attorney
Second Region.

Answer of the Respondent Corporate (Telephone Bonds) to the Complaint of the Board as amended to June 14, 1937

United States of America

Before the

NATIONAL LABOR RELATIONS BOARD

Second Region

In the Matter

of

Consolidated Edison Company of New York, Inc., and its affiliated Companies Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company,

Respondents,

and

United Electrical and Radio Workers of America, affiliated with the Congress of Industrial Organizations.

Case No. II-C 236

Answer of Respondents to Complaint as amended June 14, 1937

The respondents above named, having appeared herein specially and only for the purposes stated in their Notice of Motion dated May 17, 1937, hereby jointly and

Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937

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severally Answer the complaint herein as amended to and including June 14, 1937, reserving, however, in all respects their objections to the jurisdiction of the National Labor Relations Board as stated in their Notice of Motion; and respectfully show and allege upon information and belief:

I. The respondents admit the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the complaint, except 128
that the respondents allege that the Consolidated Edison Company of New York, Inc., has not been and is not engaged in the manufacture, distribution and sale of steam to the general public, and that the facts as to the percentages of the outstanding capital stock of various of the respondents owned by the respondent, Consolidated Edison Company of New York, Inc., are more accurately shown in the Stipulation of the parties, dated June 2, 1937, which has been made a part of the record in this proceeding. The respondents further allege that each of the respondents (except the Consolidated Telegraph and Electrical Subway Company) is a corporation organized and existing under general or special laws of 129
the State of New York for the purpose, and is subject to the public duty, of supplying electric, gas or steam service, to consumers situated within their respective local franchise territories within the City of New York or the County of Westchester; that, in addition to the general corporate powers of the respondents, they possess, and conduct their operations by virtue of, various local franchises to lay, maintain and operate mains, pipes, wires or other conductors for conducting gas, electricity or steam, in, on, over, under and through the streets, avenues and other public places within the City of New York and in various cities, villages and towns

Answer of the Respondent Consolidated (petitioners herein) to the Complaint of the Board as amended to June 14, 1937

to Westchester County, subject to the terms of such franchises and to such reasonable regulations as the local municipal authorities may prescribe; that these franchises were granted in some instances by special legislative Acts of the State of New York and in other instances by consents of the local municipal authorities in the State of New York; that (excepting the respondent Consolidated Telegraph and Electrical Subway
121 Company) each of the respondents is "a public utility company" as defined in Section 2, subdivision 22, of the Public Service Law of the State of New York, and is subject to the jurisdiction and regulatory powers of the Public Service Commission of the State of New York as to its operations, properties, rates, revenues, expenditures, accounts and other respects provided by law; that the public obligation of such respondents is to render adequate and continuous service, at rates limited by such regulation, to local consumers situated in their respective territories within the City of New York or Westchester County; that the respondent Consolidated Tele-
122 graph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York; that, although affiliated with the Consolidated Edison Company of New York, Inc., through the latter's ownership of its stock, said respondent is not a public utility, within the meaning of the Public Service Law of the State of New York, and does not produce or supply electricity, gas or steam, or sell any product to anybody; and that under a contract dated April 7, 1887, modifying a prior contract dated July 22, 1886, with the Commissioners of Electrical Subways for the City of New York, ratified and confirmed by and subject to express legislative enactment (Chapter 716, Laws 1887), as modified

Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937

by a contract dated May 15, 1891 authorized by Chapter 231, Laws 1891, the Consolidated Telegraph and Electrical Subway Company provides, constructs, equips, maintains and operates subways, ducts, and conduits for the reception of electrical conductors (other than telegraph and telephone conductors) in the Borough of Manhattan and The Bronx, City of New York, within which its operations are wholly conducted. 133

II. The respondents deny the allegations of Paragraph 9 of the complaint, as made, and allege that the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, and the New York Steam Corporation, are commonly referred to as the Consolidated Edison Company group of Companies or the Consolidated Edison Company System; that the respondents (other than the Consolidated Telegraph and Electrical Subway Company) constitute, and are operated as, a unitary and integrated system, in the respects stated and shown in the Stipulation of the parties dated June 2, 1937, for the supplying of electric, gas and steam service to consumers within parts of the City of New York and the County of Westchester, State of New York; that each of the respondent Companies has executive and operating officers and employees who are not officers of the respondent Consolidated Edison Company of New York, Inc., but who take part, with the Trustees and officers of the latter, in the discussion and determination of the major and general policies of the group of Companies; and that the major labor policies, among others, of the group of Companies are thus discussed and determined, 134 135

but are locally administered and applied by and through the Board of Directors and executive officers of each Company, in a manner not inconsistent with the general policies as determined by and for the group of Companies.

III. The respondents deny the allegations of Paragraph 10 of the complaint, except that the respondents allege that the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York Steam Corporation, purchase coal, oil, and other materials, for use in the production of electricity, gas or steam; that such purchases of coal, oil, and other materials are made only from non-affiliated producers or dealers; that none of the respondents owns or operates, or is interested in, directly or indirectly, any mine, well, refinery, processing establishment or factory, from which it purchases or receives materials used in the production of electricity, gas or steam (excepting by-products produced in the respondents' own gas plants and used in large part in their own plants as fuel, as hereinafter set forth); that the coal purchased and delivered to the Consolidated Edison Company of New York, Inc., and its affiliated Companies was mined outside of the City and State of New York, and was brought to the various plants in New York City by rail and barge or by rail and steamship; that none of the respondents owns or operates any ships, barges, tugs, or freight cars, for the transportation or delivery of coal, or any other materials, from the point of receiving delivery to the stations or storage yards of the respondents; that where the point of receiving delivery of coal is other than at a station or storage yard of one of the respondents, the transportation and handling of the coal

Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937

thence to one of the stations or yards of the respondents are done by persons who are employees of the carrier and are not employees of the respondents; that the Consolidated Edison Company of New York, Inc., purchases gas-oil, under contracts, for its gas operations; that such oil is produced at wells and refineries outside the City and State of New York, and is delivered by the seller to the purchaser, within the City of New York, in barges alongside the gas plants; that the respondent Consolidated Edison Company of New York, Inc., and certain of its affiliated Companies buy copper mined outside of the State of New York, substantial quantities of which are purchased from concerns outside of New York, which is delivered to the purchaser within the State of New York; that the respondent Consolidated Edison Company of New York, Inc., and certain of its affiliated Companies, purchase other materials and equipment and supplies, including distribution and power transformers, switches, steel pipe, concrete, cement, electric meters, gas meters, incandescent lamps, etc., from dealers of whom most are located within the City or State of New York but some of whom are located outside of the State of New York; and that such purchases are made under contracts or orders, which in most instances provide for delivery to one of the respondents within the State of New York, but in some instances delivery is made by the seller outside of the State of New York, and the transportation to one of the respondents is performed by others than employees of any of the respondents.

IV. The respondents deny the allegations of Paragraph 11 of the complaint. Respondents allege that the respondents have no interconnection with any other

142 public utility company or system for the supplying or exchange of gas or steam, and no interconnection with any public utility or system located outside of the State of New York for the supplying or exchange of electric energy, and no interconnection for the supplying or exchange of electric energy with any company or system supplying electricity, gas or steam to the public, within or outside the State of New York, except the intercon-
143 nection with the New York Power and Light Corporation, which is an affiliated company of the Niagara Hudson Power Corporation; that the New York Power and Light Corporation operates steam, electric and hydro-electric generating plants, and supplies electric service and gas service to consumers, all situated within the State of New York, in eastern New York State, including territory north of Westchester County; that the lines of the New York Power and Light Corporation are publicly stated to be interconnected with those of other companies of the same system, which are situated and operated within the State of New York; that the
144 interconnection with the New York Power and Light Corporation is from the Hell Gate Station, at 134th Street and the East River in the Borough of The Bronx, City of New York, to the County boundary between Westchester and Putnam Counties interconnecting with the New York Power and Light Corporation's feeders at that point; that the Consolidated Edison Company and The Yonkers Electric Light and Power Company, in their respective territories, own the transmission lines between the Hell Gate station and the boundary between the City of Yonkers and the Town of Greenburgh, in the County of Westchester, from which point the overhead transmission lines to the Putnam County line are owned

Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937

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by the Westchester Lighting Company; that none of the respondent Companies owns, or transmits electric energy over any part of, the transmission line north of the County boundary between Westchester and Putnam Counties; that the electric energy transmitted by the respondents to the lines of the New York Power and Light Corporation is supplied by the latter to its consumers within the State of New York and is not transmitted, by it or by any of its affiliated companies, across 146
any State boundary; and that none of the respondents has any interconnection with any company operating outside of the State of New York.

V. The respondents deny the allegations of Paragraph 12 of the complaint, except that they allege that incidentally to the manufacture of gas, certain by-products of the distillation of coal and gas-oil are recovered; that in quantity and value, the principal by-products are coke (including breeze), tar, light oils and sulphate of ammonia; that coke and tar by-products are in large part used by the Companies themselves as fuel in gas manufacture; that from time to time as these 147
by-products are recovered in gas operations, they are sold by the respondent Consolidated Edison Company to manufacturers or jobbers in New York City, for commercial uses, and that delivery to the purchaser is in each instance made at the gas plant, within the City of New York.

VI. As to the allegations of Paragraph 13 of the complaint, the respondents admit that the respondents Consolidated Edison Company of New York, Inc., Westchester Lighting Company, or The Yonkers Electric Light and Power Company, sell and deliver electric energy to the New York Central Railroad Company, the

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New York, New Haven and Hartford Railroad Company, and the Hudson and Manhattan Railroad Company, and that some of the energy so sold and delivered by such respondents to such carriers is or may be used by some of such carriers in the transportation of persons and property upon trains which are a part of interstate operations. Except to the extent above admitted, the respondents deny the allegations of Paragraph 13
149 of the complaint, and further allege that the Consolidated Edison group of Companies supplies electric energy under contracts with the New York Central Railroad Company; that electricity is used by the Railroad Company in part for the lighting and operation of the Grand Central Terminal, in part for the lighting and operation of various hotels, office buildings, and residential premises, upon terminal lands and appurtenant to the terminal property, and in part for the electric operation of local passenger trains upon the Hudson River Division of the Railroad as far as Croton, New York, and of through passenger trains as far as Harmon, New
150 York; that various of the through trains so operated on that Division are a part of interstate transportation of passengers; that such through trains are changed from electric to steam operation at Harmon; that local passenger trains are operated electrically as far as Croton, New York; that no steam-propelled passenger trains ordinarily enter New York City on the Hudson River Division of this railroad; that electricity supplied by the Consolidated Edison Company is used for the air-conditioning of Pullman cars, in the yards of the New York Central Railroad Company within the City of New York; that the Consolidated Edison Company also supplies electric energy under contracts with the New York,

Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937

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New Haven and Hartford Railroad Company; that electric energy is used by the Railroad Company for the operation of its freight terminals and for its operation of passenger trains out of Grand Central Terminal, some of which trains are only for intrastate traffic, and others of which are for interstate traffic; that the Consolidated Edison Company also supplies energy under contract with the Hudson and Manhattan Railroad Company; that the electric energy is used by that Company for the lighting and operation of its Hudson Terminal Buildings at Nos. 30 and 50 Church Street, Borough of Manhattan, and for the operation of its local rapid transit railroad from 33rd Street and Sixth Avenue, in the Borough of Manhattan, southward underground along Sixth Avenue to Christopher Street, Borough of Manhattan, and thence by tunnel to Jersey City and Hoboken; also an interurban railroad from the Hudson Terminal Buildings, through the tube or tunnel under the North River, to Jersey City and Newark; that the electricity sold to each of the said Railroad Companies was and is delivered to it at designated locations wholly within the City of New York, and that none was transmitted by any of the respondents beyond the points of such delivery.

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VII. The respondents deny the allegation of Paragraph 14 of the complaint that they jointly and severally are the sole suppliers of electric current in the City of New York outside of the County of Richmond. The respondents admit that they sell and deliver electric energy to various persons and corporations having their offices and plants in New York City, some of which persons and corporations are or may be engaged in interstate as well as local shipment of products or operations

154 *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

Respondents further allege that all of the business offices, electric generating stations, substations, gas manufacturing plants, steam generating plants, and various other properties, of the respondents, are located and used by the respondents within the City of New York or the County of Westchester; that all transmission and distribution facilities and equipment and all other property owned by the respondents and used in their business
155 are located and used by the respondents within the City of New York or the County of Westchester; that all meters in use by any of the respondents are located, and are read, on the premises of consumers, situated within the City of New York or the County of Westchester; that the preparation and sending of bills to consumers takes place within the City of New York or the County of Westchester; that all metering apparatus and equipment furnished by the respondents are located on premises of customers within the City of New York or the County of Westchester; that none of the respondents undertakes, or has any contract or agreement, to
156 supply, deliver or transmit electric energy at any location outside of the State of New York, or to supply or deliver electric energy for resale by customers outside of the State of New York, and that none of the operations of the respondents directly affects interstate commerce.

VIII. The respondents deny the allegations of Paragraph 15 of the complaint, except that they admit that they sell and deliver electric energy for lighting, heat, power and miscellaneous local uses to various offices, branches, agencies and authorities of local, State and Federal governments, within the City of New York or the County of Westchester, and that some of the energy so supplied is used by the purchasers thereof for the

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operation of tunnels, docks, bridges and highways, which are or may be used in some part for interstate as well as local movement of persons and property. The respondents deny that the provisions of the National Labor Relations Act extend and apply to employers by reasons of the latters' sale of products or service to government as such.

IX. The respondents deny each of the allegations of Paragraph 16 of the complaint, on the ground that such allegations constitute no more than conclusions or argument on the part of the complainant. Respondents deny that any of them is engaged in interstate commerce or in "commerce" as defined in the National Labor Relations Act, and deny that the sale and delivery of gas, electricity or steam by any of the respondents enter into, burden or affect "commerce" as defined in the Act. The respondents allege that their operations are local and wholly intra-state in character and are wholly and exclusively subject to the jurisdiction and laws of the State of New York. The respondents further allege that the labor practices of any of the respondents are exclusively subject to the jurisdiction and laws of the State of New York and in particular to the New York State Labor Relations Act (Chapter 443 of the Laws of 1937).

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X. The respondents deny each and every allegation of Paragraph 17 of the complaint. The respondents admit that, at various times within the period covered by the complaint, but not subsequent to October, 1936, the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company, did employ independent and outside operatives to do special work for the purpose of protecting the property

and operations of such respondents against actual and threatened violence, and of preventing threatened interference with the continuity of the respondents' service to the public. Such respondents allege that such services of outside operatives, in so far as they related to employees of such respondents at all, were not related to labor organizations as such or to activities in behalf of labor organizations as such, and that such services
161 did not relate to persons because of their membership in labor or other organizations, but because of actual and threatened violence to property of such respondents and to the ability of such respondents to render continuous service to the public. Respondents specifically deny that any of them has employed any such outside operatives since October, 1936, and that any of the respondents has been or is engaged in any "unfair labor practices" within the meaning of the National Labor Relations Act; and the respondents deny further that the National Labor Relations Act is in any way applicable to any of them.

162 XI. As to the allegations of Paragraph 18 of the complaint, the respondent New York and Queens Electric Light and Power Company admits that, on or about November 29, 1935, in the exercise of its powers and duties of management, such respondent terminated the employment, among others of its employees, of Martin A. Wersing, Julius A. Greulich, and Michael A. Wagner, and that such respondent has not reinstated any of such three former employees. The respondents deny each and every other allegation of Paragraph 18 of the complaint.

XII. As to the allegations of Paragraph 19 of the complaint, the respondent Consolidated Edison Com-

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pany admits that, on or about January 17, 1936, in the exercise of its powers and duties of management, such respondent (then named Consolidated Gas Company of New York) terminated the employment, among others of its employees, of Stephen L. Solosy; and that such respondent has not reinstated such former employee. The respondent New York and Queens Electric Light and Power Company admits that, on or about June 19, 1936, in the exercise of its powers and duties of management, such respondent terminated the employment, among others of its employees, of William J. Kennedy and John J. Emler, and that such respondent has not reinstated either of such two former employees. The respondents deny each and every other allegation of Paragraph 19 of the complaint.

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XIII. The respondents deny each and every allegation of Paragraph 20 of the complaint.

XIV. The respondents deny each and every allegation of Paragraph 21 of the complaint.

XV. The respondents deny each and every allegation of Paragraph 22 of the complaint, except that the respondents admit that some employees of the respondents have solicited membership in various labor organizations of their own choosing, including both the International Brotherhood of Electrical Workers and the complainant organization which filed the charge in this case, and that such solicitation may have at times taken place during working hours and on the respondents' property; also, that the respondents have not withheld, or made deductions from, the pay of such employees, on account of time during which they may have engaged in such solicitation during hours of work.

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The respondents deny that any of them has been

166 *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

guilty of any interference with or restraint or coercion of employees in the exercise of any right of organization for the purpose of collective bargaining or other mutual aid or protection through representatives chosen by such employees, or has been guilty of any domination or interference with the formation or administration of any labor organization. The respondents allege that they have, at least at all times since the year 1933, recognized
167 and favored collective bargaining by and for such of their employees as wished to bargain collectively, through representatives of their own choosing. In the year 1933, the respondents publicly announced to their employees that they were privileged to take a secret ballot on the questions whether they wished to establish a system of collective bargaining for such employees as availed themselves of it, and whether they wished to adopt and put in force an electoral system under which the employees, in the various bureaus and departments, would nominate by petition and elect by secret ballot their own representatives for collective bargaining,
168 wholly without prejudice to the right of any employee to belong also to any labor organization if he saw fit. Upon receiving petitions signed by a majority of their employees, the respondents cooperated with committees of their employees in the development and submission of such a system for collective bargaining and for the election of employee representatives for such purpose. Such a system of nomination and election was adopted and put in force by the employees, in 1933 and early in 1934, and was participated in freely by practically all of the employees, irrespective of the membership of many or some of them in labor organizations. At the request of the elected representatives of the employees, the respondents paid the cost of voting booths, printing,

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ballots, etc., for conducting such elections, permitted the same to be conducted on company property within the normal working hours of some of the employees, permitted the elected representatives of the employees to conduct their bargaining with the management and the other business of the employee councils without deduction from pay for the time spent in so doing, and defrayed the necessary expenses of the employee councils in conducting their business of bargaining with the 170
management. This system was continued in effect by the employees; and the elected representatives were recognized and dealt with by the respondents, from 1933 until the month of April, 1937. Nearly all of the employees continued to vote and take part in the choice of their representatives; and this electoral system was not regarded by the respondents as a "labor organization" or as in any sense a "company union." Nevertheless, in April of 1937, in view of what appeared to be the virtual certainty that a New York State Labor Relations Act would be enacted (Ch. 443 of the Laws of 1937), it became evident to the respondents that they 171
could not continue, under the new law, the payment of the expenses of employees in operating this system for the election of employee representatives, and that the provisions of the new law would, if valid, in effect outlaw and bar any representatives chosen by the employees under the existing plan. Accordingly, on April 20, 1937, notification to this effect was given by the respondents to the then elected representatives of the employees, who were further advised that, if they wished to continue collective bargaining with the management, the representatives of the employees would have to be selected through other instrumentalities conforming to the spirit as well as the letter of the proposed State Labor Relations Act.

172 *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

At the same time, the respondents announced to their employees that the respondents had recognized the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor as the collective bargaining agency for such of their employees as were, or chose to become, members of that labor organization, but that every employee would continue to have a free choice as to whether he wished to belong to that organi-
173 zation or any other, and as to whether he wished that labor organization to represent him, in collective bargaining or otherwise dealing with the management of the respondents. The respondents deny, however, that they have used any restraint, coercion, intimidation, domination or interference, to induce employees to become members of that labor organization. Respondents further allege that, since April 20, 1937, they have severally negotiated collective bargaining agreements with the International Brotherhood of Electrical Workers and their respective local unions of that labor organization, in behalf of such employees of the respondents as belong to the International Brotherhood of Elec-
174 trical Workers and such local unions, and that the membership of such local unions is believed by the respondents to represent more than a majority of the employees of each respondent. Such labor agreements negotiated with the International Brotherhood of Electrical Workers have in most instances been executed by and in behalf of both the respondents and the International Brotherhood of Electrical Workers and its local union, but in a few instances are in course of execution at the time of this answer.

XVI. The respondents deny each and every allegation of Paragraph 23 of the complaint.

Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937

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XVII. The respondents deny each and every allegation of Paragraph 24 of the complaint.

AND FOR A FIRST DEFENSE

XVIII. The respondents repeat and reallege each of the denials and averments set forth in Paragraphs I-XVII, both inclusive, with the same force and effect as though here set forth in full.

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XIX. The respondents jointly and severally allege that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the repondents, alleged in the complaint, are not shown to affect "commerce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York and not of the Federal Government, and that the Legislature of the State of New York, has, upon the recommendation of The Governor, enacted an Act entitled "An Act to amend the labor law; in relation to establishing a State Labor Relations Board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the Department of Labor" (Chapter 443 of the Laws of 1937), by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder. The respondents severally ask that the complaint and the proceeding be dismissed accordingly.

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178 *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937.*

AND FOR A SECOND DEFENSE*

XX. The respondents repeat and reallege each of the denials and averments set forth in Paragraphs I-XIX, both inclusive, with the same force and effect as though here set forth in full.

XXI. The respondents jointly and severally allege that, if the National Labor Relations Act be construed,
179 as contended for in the complaint herein, so as to apply to the respondents and to the matters and things alleged in the complaint, and so as to confer upon the National Labor Relations Board jurisdiction and power to hear and determine the same, the Act as so construed and applied is invalid, unconstitutional, and repugnant to the rights of the respondents under the Constitution of the United States.

WHEREFORE the respondents jointly and severally pray that the complaint and proceeding herein be dismissed.

180 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

By

O. H. FOGG,
Vice Chairman.

BROOKLYN EDISON COMPANY, INC.,

By

A. AUGUSTUS LOW,
Executive Vice President.

* On July 6, 1937, the last day of the hearing, the respondent Companies asked leave to amend their answer so as to plead a *third* defense, viz., that the making of the Contracts by and with Local Unions representing 30,000 (much more than a majority) of the petitioners' employees, rendered *moot* the charges of coercion, restraint, etc. This amendment of the answer was allowed, without objection from the Board (S. M. 1432).

Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937 181

NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY,
By

L. A. COLEMAN,
Executive Vice President.

WESTCHESTER LIGHTING COMPANY,
By

STUART WILDER, 182
Vice President.

THE YONKERS ELECTRIC LIGHT AND POWER COMPANY,
By

STUART WILDER,
Vice President.

NEW YORK STEAM CORPORATION,
By

DAVID C. JOHNSON,
President.

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CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY,
By

E. S. CALLAHAN,
President.

WHITMAN, RANSOM, COULSON & GOETZ,
Attorneys for Respondents,
Appearing specially and only for the purposes stated in the Notice of Motion dated May 17, 1937,
No. 40 Wall Street,
New York City.

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The post-office addresses of the respondents are as follows:

Consolidated Edison Company of New York, Inc., 4 Irving Place, New York City.

Brooklyn Edison Company, Inc., 380 Pearl Street, Brooklyn, N. Y.

185 New York and Queens Electric Light and Power Company, 28-19 Bridge Plaza North, Long Island City, N. Y.

Westchester Lighting Company, The Yonkers Electric Light and Power Company, 9 South First Avenue, Mt. Vernon, N. Y.

New York Steam Corporation, 130 East 15th Street, New York City.

Consolidated Telegraph and Electrical Subway Company, 54 Lafayette Street, New York City.

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Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937.

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STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

OSCAR H. FOGG, being duly sworn, deposes and says: that he is an officer, to wit, the Vice-Chairman of the Board of Trustees of Consolidated Edison Company of New York, Inc., one of the respondents in the above-entitled proceeding, and the Vice-Chairman or a member of the Board of Directors of Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company, the other respondents in the above-entitled proceeding; that he has read the foregoing Answer, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; and that the sources of his information and grounds of belief are records and papers of the respondents and communications from and conversations with other officers and employees of the respondents.

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OSCAR H. FOGG.

Sworn to before me this
16th day of June, 1937.

MARION SEITZ,
Notary Public.
New York County Clerk's No. 657.
Register's No. 9-S-682.
Commission Expires March 30, 1939.

(Seal)

Order of the Board dated September 29, 1937, Transferring the Proceeding to the Board

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 29th day of September, 1937.

Present:

J. WARREN MADDEN, *Chairman*,
DONALD WAKEFIELD SMITH,
EDWIN S. SMITH.

IN THE MATTER of CONSOLIDATED EDISON COMPANY, INC., and its affiliated companies, and UNITED ELECTRICAL & RADIO WORKERS OF AMERICA, LOCAL NO. 1212, C.I.O.

Case No. C-245

A hearing having been duly held in this proceeding fore a Trial Examiner duly appointed, and the Board deeming it necessary, in order to effectuate the purposes of the National Labor Relations Act, that the proceeding be transferred to and continued before it,

IT IS HEREBY ORDERED, in accordance with Section 37 of Article II of National Labor Relations Board Rules and Regulations—Series 1, as amended, that this proceeding be transferred to and continued before the Board.

By direction of the Board:

BENEDICT WOLF,
Benedict Wolf,
Secretary.

(Seal)

Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937

United States of America
Before the
National Labor Relations Board

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies BROOKLYN EDISON COMPANY, INC., NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY, and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the Committee for Industrial Organization.

Case C-245

Mr. DAVID A. MOSCOVITZ and Mr. WILL MASLOW, *for the Board.*

WHITMAN, RANSOM, COULSON & GOETZ, by Mr. WILLIAM L. RANSOM and M. ANGUS M. BERKSON, of New York City, *for the Respondents.*

Mr. LOUIS B. BOUDIN and Mr. SIDNEY ELLIOTT COHN, of New York City, *for the United.*

Mr. JOSEPH FRIEDMAN, *of Counsel to the Board.*

DECISION AND ORDER

Statement of the Case

Upon charges duly filed by United Electrical and Radio Workers of America, herein called the United, the

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Cable. In 1936 the respondents purchased $4,659,840 worth of cable, of which approximately 30 per cent came from factories situated outside the State of New York.

Other materials and equipment. In 1936 the respondents purchased substantial quantities of other materials, equipment, and supplies, including distribution and power transformers, switches, steel pipe, concrete, cement, electric meters, gas meters, poles, incandescent lamps, and similar items. Part of these items were purchased from concerns situated outside the State of New York, and part from dealers within the State of New York.

E. Dependence of Particular Consumers on Electric Energy and Gas Supplied by the Respondents

The written stipulation for the determination of the question of jurisdiction entered into by counsel for the Board and counsel for the respondents sets forth data concerning a number of particular consumers which show the dependence on the electric energy and gas supplied by the respondents of various types of important businesses engaged in interstate and foreign commerce and communication and the disastrous effect on such commerce and communication that would result from a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employees.

Railroads. The respondents supply electric energy to the New York Central Railroad, an interstate railroad. The electricity is used by the Railroad Company in part for the lighting and operation of the Grand Central

Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937

Terminal, a terminal for interstate and intrastate trains operated by the Railroad Company, in part for the lighting and operation of various structures on terminal lands, and in part for the electric operation of both intrastate and interstate passenger trains from Harmon, New York, to the Grand Central Terminal and from the Grand Central Terminal to Harmon, New York. No steam-propelled passenger trains ordinarily operate between the Grand Central Terminal and Harmon, New York. Electricity supplied by the respondents is also used for the air-conditioning of Pullman cars attached to interstate trains in the yards of the Railroad Company in New York City. In 1936 the Railroad Company purchased from the respondents 145,593,421 kilowatt hours for all purposes. The respondents deliver all of the electric energy to the Railroad Company at designated locations in the State of New York.

The respondents also supply electric energy to the New York, New Haven, and Hartford Railroad Company, an interstate railroad, which utilizes it for the operations of its freight terminals, for both interstate and intrastate trains, and for the operation of passenger trains in and out of Grand Central Terminal, many of which trains operate on interstate runs. The total electric energy supplied to the New Haven Railroad in 1936 was 58,793,983 kilowatt hours and was delivered at designated locations in the State of New York.

The respondents also supply electric energy to the Hudson and Manhattan Railroad Company, which utilizes it for the lighting and operation of its terminal buildings, for the operation of a rapid transit railroad which runs for a distance in New York City and thence by tunnel to Jersey City and Hoboken, New Jersey, and

196 *Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937*

National Labor Relations Board, herein called the Board, by Elinore Morehouse Herrick, Regional Director for the Second Region (New York City), issued its complaint dated May 12, 1937, against Consolidated Edison Company of New York, Inc., and its affiliated Companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power
197 Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company, herein called the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect of the unfair labor practices, the complaint in substance alleged (1) that the respondents had employed and were employing industrial spies for the purpose of disclosing to the respondents the activities of their employees in and on behalf of labor organizations;
198 (2) that on or about November 29, 1935, the respondents discharged, and thereafter refused to reinstate, Martin A. Wersing, Julius A. Greulich, and Michael Wagner, employees of the respondents, and on or about June 19, 1936, discharged, and thereafter refused to reinstate, William J. Kennedy and John Emler, employees of the respondents, for the reason that they had engaged in concerted activities with other employees of the respondents for their mutual aid and protection; and (3) that the respondents had interfered with, restrained, and coerced their employees in the exercise of their right to form, join, and assist labor organizations of their own choosing and were continuing to do so, had contributed

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and were contributing financial and other support to the International Brotherhood of Electrical Workers, herein called the I. B. E. W., and had coerced and were coercing their employees to join or assist the I. B. E. W.

Copies of the complaint and of notice of a hearing to be held on June 1, 1937, at New York City, both dated May 12, 1937, were duly served upon the respondents, upon the United, and upon the I. B. E. W. On May 25, 1937, the Regional Director issued and duly served upon the parties and the I. B. E. W. an amended notice of hearing, specifying that the hearing would be held on June 3, 1937, instead of on June 1, 1937.

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On May 17, 1937, the respondents, appearing specially, filed a motion to dismiss the complaint for lack of jurisdiction, on the ground that the Act was inapplicable to the respondents and their labor relations with their employees, for the reason, it was asserted, that the respondents conduct a local, intrastate business and are, therefore, subject exclusively to the New York State Labor Relations Act,[1] which was to become effective on July 1, 1937. The motion included a request that the motion be heard and determined by the Board prior to the hearing on the complaint, and was accompanied by an affidavit of Oscar H. Fogg, vice-chairman of the board of trustees of the respondent Consolidated Edison Company of New York, Inc., and vice-chairman or member of the board of directors of each of the affiliated companies named as respondents, containing a statement of facts tending to show that the respondents' business was of an intrastate character. On June 2, 1937, the

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[1] Chapter 443 of the Laws of 1937. The State Act is also designated as Article 20 of the Labor Law.

202 *Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937*

Board denied the respondents' request for a prior and separate hearing by the Board on the motion to dismiss the complaint.

Pursuant to the amended notice, a hearing was held at New York City on June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, before Robert M. Gates, duly designated as Trial Examiner by the Board. The Board, the respondents, and the United were represented by counsel
203 and participated in the hearing. The I. B. E. W. did not appear at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all the parties.

At the commencement of the hearing, argument was heard on two separate petitions to intervene filed with the Regional Director prior to the hearing by The Independent Gas and Electric Workers Union of Westchester County and by Independent Gas and Electric Union, both labor organizations claiming to have filed with the Regional Director informal charges against the respon-
204 dents. The complaint herein was not based on these informal charges, but only on the formal charge filed by the United. Upon separate objections by counsel for the Board, the respondents and the United, the Trial Examiner reserved decision thereon, but on June 10, 1937, the second day of the hearing, he denied both petitions to intervene. The ruling is hereby affirmed.

At the commencement of the hearing, the respondents reserved their objections to the jurisdiction of the Board and noted an exception to the order of the Board denying a prior and separate hearing on the respondents' motion to dismiss the complaint. At the close of the presenta-

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tion of the Board's case, the motion to dismiss the complaint for lack of jurisdiction was renewed by the respondents and was denied by the Trial Examiner. The ruling is hereby affirmed.

On June 10, 1937, the second day of the hearing, the Trial Examiner allowed the complaint to be amended to include allegations of the discriminatory discharge of Stephen L. Solosy, without objection by the respondents other than their general reservation of objections to the 206
jurisdiction of the Board. On June 14, 1937, the respondents filed a verified answer; in which they reserved their objections to the jurisdiction of the Board and in substance denied engaging in the unfair labor practices alleged in the complaint, setting forth in addition affirmative allegations in defense thereof.

Upon the completion of the presentation of the Board's case on June 24, 1937, counsel for the respondents requested an adjournment until July 6, 1937, to enable him adequately to prepare and present the respondents' case, and in particular to secure the testimony of Floyd L. Carlisle and Harold Dean, the testimony of both of whom 207
was asserted to be indispensable. It was shown that Carlisle, who was chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and had been in charge of the respondents' labor policies and negotiations, was in France attending a meeting of the World Power Conference and would return to New York City on July 5, 1937; and that Dean, who was vice-president of New York and Queens Electric Light and Power Company and in charge of the execution of the policies of that company which resulted in the alleged discriminatory discharges of five of the persons named

208 in the complaint, was in Milwaukee attending the annual conference of the American Institute of Electrical Engineers and was thus unavailable as a witness at that time. The only reason offered for not calling other witnesses at the close of the Board's case was that the Board had completed the presentation of its case sooner than was anticipated by the respondents. The Trial Examiner granted an adjournment until July 6, 1937,
209 for the purpose of receiving the testimony of Carlisle only, and reserved until that time decision on the question whether the testimony of Dean and other witnesses would be taken when the hearing was resumed on July 6, 1937. The Trial Examiner granted permission to the respondents to present the matter of taking the testimony of witnesses other than Carlisle on July 6, 1937, directly to the Board in the meantime. This was done by the respondents in a letter to the Board, dated June 28, 1937. The Board replied in a letter, dated July 2, 1937, stating that it would permit both Carlisle and Dean to testify on July 6, 1937, but would not permit any other witnesses to testify, on the ground that such other
210 witnesses should have been produced on the completion of the presentation of the Board's case on June 24, 1937. After the testimony of Carlisle and Dean had been received on July 6, 1937, counsel for the respondents called a witness to testify concerning the alleged discriminatory discharge of Stephen L. Solosy. The Trial Examiner refused to allow the witness to testify. The respondents duly excepted to the ruling of the Trial Examiner. The Trial Examiner, however, allowed the respondents to introduce into the record an offer of proof concerning the alleged discriminatory discharge of Stephen L. Solosy.

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After the close of the Board's case, counsel for the Board moved to conform the complaint to the evidence. The Trial Examiner denied the motion in so far as it was directed to bringing within the allegations of the complaint the discriminatory discharge of Philemon Ewing, who was not named in the complaint, but concerning whose discharge testimony had been received; but in other respects the motion was granted. The ruling is hereby affirmed. At the same time the Trial Examiner granted the respondent's motion to amend its answer to include as a separate defense allegations that certain contracts executed by the respondents and certain locals of the I. B. E. W. as of June 15, 1937, after the commencement of the hearing, had rendered moot any controversy raised by the complaint.

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The parties did not avail themselves of the opportunity afforded for argument at the close of the hearing, but thereafter the respondents filed a brief.

By order of the Board, dated September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 27, of National Labor Relations Board Rules and Regulations—Series 1, as amended.

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During the course of the hearing the Trial Examiner made a number of rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

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FINDINGS OF FACT

I. THE RESPONDENTS AND THEIR BUSINESSES

A. Incorporation and nature of business

Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company are New
215 York public utility corporations, having their principal offices and places of business in New York City. They are engaged in the business of supplying electric energy to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and a part of the Borough of Queens, within the City of New York. Consolidated Edison Company of New York, Inc. is engaged also in the business (a) of supplying gas to consumers situated in the Boroughs of Manhattan and The Bronx, and a part of the Borough of Queens, and (b) in selling to manufacturers and jobbers in New York City for commercial purposes certain by-products incidental to its manufacture of gas, namely, coke, coke breeze, tar,
216 light oils, and sulphate ammonia. Consolidated Edison Company of New York, Inc., besides being an operating utility company is also a holding company, owning controlling stock interests, as described below, in the other respondents herein. Westchester Lighting Company and The Yonkers Electric Light and Power Company are New York public utility corporations, having their principal office and place of business in Mount Vernon, New York. The former company is engaged in the business of supplying electricity and gas to consumers situated in Westchester County, New York, except the city of Yonkers; and the latter company is engaged in the business of supplying electricity to consumers situated

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in the City of Yonkers, Westchester County, New York. New York Steam Corporation, a New York public utility corporation having its principal office and place of business in New York City, is engaged in the business of supplying steam to consumers situated within a part of the Borough of Manhattan. Consolidated Telegraph and Electrical Subway Company, a New York corporation having its principal office and place of business in New York City, is engaged in the business of constructing, equipping, maintaining, and operating, under contracts with the City of New York, underground ducts or conduits for the reception of electrical conductors (other than telegraphic and telephone conductors) in the Boroughs of Manhattan and The Bronx. Consolidated Edison Company of New York, Inc., and Westchester Lighting Company occupy space in such ducts and pay rent for the space so occupied.

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B. Stock Ownership

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Consolidated Edison Company of New York, Inc., conducts the electric business formerly conducted by The New York Edison Company, Inc. (including that of the latter's predecessors, The New York Edison Company and The United Electric Light and Power Company) and by Bronx Gas and Electric Company, merged into Consolidated Edison Company of New York, Inc., in 1936; also the gas business formerly conducted by it under the name of Consolidated Gas Company of New York and that conducted by various gas companies in the Boroughs of Manhattan and The Bronx and part of the Borough of Queens, merged in 1936 into Consolidated Edison Company of New York, Inc. The latter

220 company owns more than 90 per cent of all the outstanding voting stock of each of its affiliated companies named as respondents herein.

C. Unitary and Integrated System

The respondents are commonly referred to as the Consolidated Edison Company group of companies or
221 the Consolidated Edison Company System. They constitute and are operated as a unitary and integrated system.

System management. A majority of the board of directors of each of the respondents, other than Consolidated Edison Company of New York, Inc., is made up of trustees or officers of the latter company. Each of the respondents has executive and operating officers and employees who are not officers of Consolidated Edison Company of New York, Inc., but who take part, with the trustees and officers of the latter company, in the discussion and determination of the major and gen-
222 eral policies of the respondents. The major labor policies, among others, of the respondents are thus discussed and determined, but are locally administered and applied by the board of directors and executive officers of each respondent, in a manner not inconsistent with the general policies as determined by and for the respondents as a whole.

Unified operations of System. The companies of the Consolidated Edison Company System have for many years been under a unified ownership, management, and operation. Thus, the gas operations of the System have for many years been carried on in accordance with the

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terms of joint facility arrangements; and the manufacturing plants, holder-stations, pumping stations, transfer and distribution lines, and other properties of the various companies have been and are operated as an interconnected system. Similarly, the generating facilities of the electric companies in the System have been and are operated as a unit for the System electric load, through the medium of a System operator or load dispatcher, to secure the greatest over-all economy of production consistent with the highest degree of continuity. Additional electric energy is purchased from New York Light and Power Company, which is not affiliated with the respondents, under interchange of power arrangements established with that company, in the interests of assuring continuity of service to the public and as a means of providing for the electric requirements of the System. New York Steam Corporation has a connection with one of the electric generating stations of Consolidated Edison Company of New York, Inc., from which is made available an additional supply of steam for resale to its customers.

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Location of respondents' properties. The respondents' electric generating stations, sub-stations, gas manufacturing plants, gas holder-stations, steam generating plants, service buildings, shops, store-rooms, garages, and similar structures are all maintained and operated within the State of New York, and principally in New York City and Westchester County. All transmission and distribution facilities and equipment owned by the respondents and all other property owned by the respondents and used in their business are located in New York City or Westchester County. All meters in use by any of the respondents are located and are read on the

premises of consumers situated in New York City and Westchester County; and all metering apparatus and equipment furnished by the respondents are similarly located.

Exclusiveness of respondents' service. In 1936 the System supplied 97.5 per cent of the total electric energy sold by central station companies in New York City, and practically all of the electric energy sold by central station companies in Westchester County. It supplied 55.3 per cent of the total gas supplied to consumers in New York City. It did not supply any gas to consumers in the Boroughs of Brooklyn and Richmond, and the larger part of the Borough of Queens. On the other hand, its percentage of the total gas supplied to consumers in Manhattan and The Bronx is very much greater than 55.3 per cent. Westchester Lighting Company is the only public utility supplying gas in Westchester County; and New York Steam Corporation is the only central-station steam utility in New York City.

Annual production, sales, and employment totals. In 1936, the System generated and purchased 6,038,989,792 kilowatt hours of electric energy and sold 5,130,976,460 kilowatt hours. The total revenue from the sale of electric energy amounted to $180,448,596.19. During the same period the System produced 39,286,022,000 cubic feet of gas, and sold 38,016,134,000 cubic feet. The total revenue from the sale of gas amounted to $41,103,261.69. The total revenue from the sale of steam during 1936 was $10,761,341.04. During the same period the revenue from the sale of coal and oil by-products amounted to $3,485,338.01, but such revenue is treated by the respondents as an abatement of production expenses.

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As of April 17, 1937, the respondents employed 42,101 employees. The total annual payroll for 1936, including annuities and separation allowances paid, amounted to $81,891,990.40.

D. Purchase of Materials in Interstate Commerce

Coal and oil. The raw materials used by the respondents in the production of all their electric energy, gas, 230
and steam are coal and gas-oil. In 1936 the respondents purchased 4,975,452 tons of coal at a cost of $23,224,761, and purchased 114,370,343 gallons of oil. All the coal was mined outside the State of New York and transported from points outside the State of New York to the plants of the respondents by rail and barge or by rail and steamship. All the oil is produced at wells and refineries outside the State of New York and transported in barges from points outside the State of New York to the respondents' gas plants in New York City. The respondents do not own or operate any ships, barges, tugs, or freight-cars for the transportation of gas and oil from 231
their points of origin outside the State of New York to the respondents' stations or storage yards. The respondents maintain unloading and coal conveying equipment at their stations or storage-yards and the respondents' employees unload the coal from the boats. The shipment of coal and oil to the respondents is practically continuous throughout the year.

Copper. In 1936 the respondents purchased $53,160 worth of copper for electrical construction and operation. The copper is mined outside the State of New York and a substantial portion thereof is purchased from concerns situated outside the State of New York.

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for the operation of an interurban railroad from its terminal in New York City through the tunnel under the North River to Jersey City and Newark, New Jersey. The total electrical energy supplied to this Railroad Company in 1936 was 57,221,097 kilowatt hours and was delivered at designated locations in the State of New York.

The respondents also supply electric energy to the Lehigh Valley Railroad Terminal in New York City
239 for the operation of its interstate railroad terminal.

Steam service supplied by New York Steam Corporation, a respondent herein, is used to operate compressors, for the operation of switches in the interstate railroad tunnel of the Pennsylvania Railroad Company under the North River.

Navigation in New York harbor. The respondents supply electric energy to the Federal Government for the operation in New York harbor of six lighthouses, 8 beacon or harbor lights, the United States Barge office, the United States Customs Houses, various warehouses,
240 and Governor's Island. They also supply electricity to the City of New York for the operation of devices used as aids to navigation, namely, lights on various bridges and on the ends of various piers and docks. The respondents also supply electric energy to a majority of the piers of trans-Atlantic and coastal steamship companies, along the East River and the North River, for lighting, freight-handling, and related uses. They also supply electricity to the Port of New York Authority for the operation of its terminal; the Holland Tunnel, an interstate vehicular tunnel under the Hudson River; and the other projects under its supervision.

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Ferries. The respondents supply electricity to various ferry slips from which steam-propelled ferries operate on the Hudson River between New York and New Jersey. The electricity is used in the operation of waiting rooms, ticket offices, signs, and approaches. They also supply electricity, under contract with the Federal Government, to ferry slips from which ferries operate in waters other than the Hudson River.

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United States post-offices. The respondents supply electric energy to the Federal Government for the operation of its General Post Office in New York City and some 132 branch post-offices in New York City and Westchester County. The electricity is used for operating pneumatic tubes between postal stations, equipment in stations, including conveyor belts, elevators, ventilators, and similar equipment. Postal operations are conducted on a 24-hour basis.

Telegraph. The respondents supply electric energy to the Western Union Telegraph Company and its some 210 branch offices in New York City and Westchester County, and to the Postal Telegraph Company and its some 140 branch offices in New York City and Westchester County. The electricity is used for general lighting and power purposes and for the operation of apparatus used in the transmitting and receiving of telegraphic messages, both local and interstate.

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Telephone. The respondents supply electric energy to the New York Telephone Company for the operation of its various buildings, offices, and exchanges in New York City and Westchester County. The electricity is used to operate the equipment utilized in the transmitting and receiving of interstate and local communications.

244 *Radio.* The respondents supply electric energy to RCA Communications, Inc., a subsidiary of Radio Corporation of America, which, among other uses, is used to operate the switchboards for its trans-Atlantic radio service. Similarly, the respondents supply electric energy to Columbia Broadcasting System, Inc., and to its subsidiary, Atlantic Broadcasting Company, for the purpose, among others, of operating equipment which broad-
245 casts to other states as well as the State of New York.

Airports. The respondents supply electric energy to the Floyd Bennett Air Field, for such purposes as building lighting, field illumination, the operation of a radio beam, obstruction lighting, and the operation of hangar machine shops.

Newspapers. The respondents supply electric energy to the New York Times Company for the operation of all the power equipment in the printing plant and for general lighting purposes. The newspapers printed and published by this company are circulated throughout the
246 world.

Dow-Jones Tickers. The respondents supply electric energy to Dow-Jones and Company, Inc., for the operation of its financial news ticker service.

New York Stock Exchange. The respondents supply electric energy to the New York Stock Exchange Building Company, and a related concern, Stock Exchange Building Company, located in the same premises, for light and power in the operation of the Stock Exchange and of the Stock Exchange ticker system for the sending out of stock quotations and transactions. Through this system stock exchange quotations are made instantly available throughout the country by telegraph.

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F. Relation to Commerce

On January 15, 1936, an interruption of the alternating current service in parts of the Boroughs of Manhattan and The Bronx was produced by a short circuit in the respondents' Hell Gate generating station. Service to some 40,000 customers, out of about 2,000,000 electric customers of the respondents, involving about ten per cent of the load, was affected. Although other generating plants of the System took over the load from such units at the Hell Gate station as were affected by the short-circuit, several telephone exchanges and branch post-offices, and various industrial and commercial concerns in the area affected, experienced a partial or total interruption of electric service, as the restoration of service required considerable work in the streets, on transformers, and on consumers' premises (fuses, motors, etc.) to repair the effects of the impact of the short circuit on the distribution lines in the area affected, as well as work in the electrical galleries at Hell Gate.

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This incident coupled with the fact that the respondents supply 97.5 per cent of the total electric energy sold in New York City by central station companies and the respondents' contention at the hearing and in their brief that the operations of the System could easily be endangered and seriously dislocated by a single one of certain of its employees, is indicative of the effect which a labor dispute between the respondents and their employees might have upon the operations of the respondents and the multitude of businesses whose operations are dependent on them for electric energy.

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It thus becomes evident from all the above findings (1) that the respondents receive vast quantities of coal

and oil and quantities of copper, cable, and other commodities in interstate commerce; (2) that the highly industrial and commercial area of New York City and Westchester county, the former the largest shipping, transportation, and commercial center in the United States, is almost entirely dependent on the Company as a commercial source of electric energy and steam, while the Boroughs of Manhattan and The Bronx, a part of the Borough of Queens, and Westchester County are almost entirely dependent on the respondents for gas; (3) that a labor dispute between the respondents and their employees interrupting the respondents' operations would seriously affect the flow of vast quantities of coal and gas-oil, and quantities of copper, cable and other commodities, in interstate commerce; (4) that a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employees, (a) would in a short time paralyze the operations of many of the instrumentalities of interstate and foreign commerce and communication in and around New York City, and thereby also paralyze the operations of most of the businesses situated in the area served by the respondents and engaged in shipping and receiving commodities in interstate and foreign commerce, and would curtail the United States mail service, including mail carried in interstate and foreign commerce, and (b) would directly cause the cessation or curtailment of the operations of the businesses served with power by the respondents and engaged in shipping and receiving commodities in interstate or foreign commerce.

Expressed concisely, a labor dispute between the respondents and their employees interrupting the respon-

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dents' operations would not only affect the flow of the large quantities of coal and oil which they receive in interstate commerce, but might be substantially equivalent to the effect on interstate and foreign commerce and communication which would be caused by simultaneous labor disputes in the respondents' business and in all the businesses served by the respondents that are engaged in operating the instrumentalities of interstate and foreign commerce and communication and all the businesses engaged in shipping and receiving commodities in interstate or foreign commerce.

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II. THE UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA

The United Electrical and Radio Workers of America, which has filed the charge upon which the complaint herein is founded, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership the employees of the whole electrical and radio industry in the United States. Local No. 1212 of the United admits to membership only employees of the respondents.

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III. THE UNFAIR LABOR PRACTICES

A. Background of labor organization among the respondents' employees

In the latter part of 1933 and the early part of 1934 organizations known as Employees' Representation plans, herein called the Plans, were established with the assistance of the respondents among the employees of each of the respondents and of each of the companies

which were merged in 1936 into Consolidated Edison Company of New York, Inc. The Plans appear to have been formed as a means of purported compliance with the National Industrial Recovery Act and the codes adopted thereunder for the power industry.

There is specific oral and documentary evidence concerning the formation and operation of the Plan among the employees of Bronx Gas and Electric Company,
257 which was merged in 1936 into Consolidated Edison Company of New York, Inc., and also ample evidence that the formation and operation of the Plans among the employees of the various other companies in the respondents' system conformed to a similar pattern. The following narrative of the establishment of the Plan among the employees of Bronx Gas and Electric Company is thus typical of the Plans established at approximately the same time throughout the companies of the respondents' system, including Consolidated Telegraph and Electrical Subway Company.

One day in the latter part of 1933, during working
258 hours, several employees of Bronx Gas and Electric Company were notified by their supervisors to report to the president and the vice-president of the Company. On their arrival they were informed by the president and the vice-president that they, the employees, had been sent on this mission by their fellow employees for the purpose of instituting a procedure for collective bargaining. They were given petitions to circulate among the employees for signatures. The petitions bore captions stating in substance that the subscribers desired to have a poll among the employees to determine upon the establishment of a means of collective bargaining.

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Harold Straub, one of the employees engaged in procuring signatures, testified that his foreman placed a company car at his disposal for contacting employees and that he devoted two full days to the task, for which he was paid his regular salary as a lineman. After sufficient signatures to the petitions had been obtained, a poll was conducted among the employees on the question whether they desired the establishment of the Plan, which had been drafted and distributed by the Company, as a means of collective bargaining. The question having been decided affirmatively, the election of officers was held shortly thereafter. Practically all the employees became members of the Plan, as it was the current sentiment that such action accorded with the desire of the Company. The Company bore the expense of conducting the poll and the election and paid for the printing of the petitions, circulars, and copies of the constitution and by-laws of the Plan and for the time devoted to the Plan by sundry employees.

The constitution and by-laws of the Plan stated that its purpose was "to provide means by which employees of the Company, through representatives of their own choosing, may deal collectively with the management of the Company" and that "collective bargaining under this Plan may relate to wages, hours of labor, working conditions, health, safety, education, recreation, and like matters affecting employment, together with the adjustment of grievances arising out of the relations of Employees with the Management." Membership was restricted to employees, and was to cease with termination of employment. There were no dues. The Plan divided the Company into a number of departments and provided for a department council and a general council. The

262 former consisted of representatives elected by the employees in each department, in the proportion of one representative for every 50 members of the Plan in the department. The general council consisted of the chairmen of the department councils. In the larger companies of the respondents' system, there were also bureau councils, bureaus being subdivisions of departments. In voting each member of the general council
263 was entitled to cast one vote for each member of the Plan represented by him.

Similar Plans were established in all the Companies of the respondents' system and in a substantially similar fashion. The respondents bore the expenses of all the meetings and elections, both of which took place on Company time and property, of clerical and stenographic services, printing, and of the entire functioning of the Plans. The members of the general and department councils were paid their regular salaries by the respondents for all time devoted to Plan affairs. The chairmen of the general councils devoted most of their time to
264 Plan work, and in the larger companies both the chairman and the secretary devoted their full time to such work, occupying offices in the respondents' premises, equipped with desks and provided with stenographic service. The chairmen of the general councils and, in the larger companies, the secretary also, were allowed expense accounts which were paid by the respondents as routine matters upon vouchers signed by department heads.

On several occasions meetings of the chairmen of all the general councils were called by the respondents for the purpose of imparting information to be reported to

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their constituents, but never for the purpose of bargaining collectively as a unit. Thus in July 1936, Carlisle, chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and member of the board of directors of each of the respondents herein, called such a meeting to inform it of the restoration of a former pay reduction and, in December 1936, to inform it that there would be no Christmas bonus as had been rumored.

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In the early part of 1934, approximately coincidental with the establishment of the Plans, there was formed a labor organization among the employees of the respondents, known as the Brotherhood of Utility Employees, herein called the Independent Brotherhood. It was a national organization, but certain of its locals limited their membership exclusively to the respondents' employees. All six employees named in the amended complaint as having been discriminatorily discharged were members of the Independent Brotherhood, while several of them were organizers of Local No. 103, which had jurisdiction of the employees of New York and Queens Light and Power Company. All six were also members

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of the Plans and at least one was for a time an officer of the Plan at New York and Queens Light and Power Company. In 1935 certain of these six employees, as stated hereinafter, formulated a petition of grievances, dealing principally with wage increases, for presentation to the management of New York and Queens Electric Light and Power Company. After overcoming the reluctance of the general council, it was finally presented to the management, but nothing was done concerning it. During the same period the Plan members of one of the departments of Consolidated Gas Company, Inc., set up a committee, headed by two members of the Independent

Brotherhood, to investigate the Plan with respect to company domination and pursuant to its mandate the committee filed monthly reports of company domination. Convinced that the Plans were dominated by the respondents, the Independent Brotherhood issued and distributed magazines, pamphlets, circulars, and leaflets attacking the Plans as company-dominated unions. Representatives of the Independent Brotherhood also attended
269 all the hearings before the New York Public Service Commission, involving such matters as rates, and claimed an interest therein by reason of their representation of respondents' employees.

Failure to achieve any success as an independent organization induced the several locals of the Independent Brotherhood in March 1936 to consolidate and affiliate with the I. B. E. W. as one local, Local No. B-752. In March 1937 the members of Local No. B-752 voted to affiliate with the United and thereupon one local, Local No. 1212, was chartered with jurisdiction over only employees of the respondents. All the members of Local
270 B-752 became members of the United Local No. 1212. Local No. B-752 was thereupon suspended by the I. B. E. W. In April 1937 the United announced the formation of a utility division and commenced a vigorous campaign to organize the respondents' employees.

At this juncture the respondents instituted a campaign to procure signatures of employees to cards designating their desire for the continuance of the Plans. This campaign was interrupted by the decisions of the United States Supreme Court sustaining the validity of the National Labor Relations Act, for thereupon the respondents discontinued their campaign and abruptly altered their labor policy, as described below.

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B. Events between April 12, 1937, and the date of execution of contracts with the I. B. E. W.

After the United States Supreme Court on April 12, 1937, rendered the decisions sustaining the validity of the National Labor Relations Act, Carlisle, who was in charge of the respondents' labor policy, had two conferences concerning the recognition of the I. B. E. W. with D. W. Tracy, the International president of the 272
I. B. E. W. On April 16, 1937, Tracy dispatched a letter to Carlisle demanding recognition of the I. B. E. W., accompanied by a proposed contract providing for recognition of the I. B. E. W. as the representative of its members, a five per cent increase in wages, and a procedure for settling grievances which outlawed strikes and lockouts. On the morning of April 20, 1937, Carlisle called a convention in the board room of Consolidated Edison Company of New York, Inc., of the members of all the general councils of all the Plans, at which he announced that in view of the decisions of the United States Supreme Court a continuance of the Plans with 273
the financial support of the respondents would constitute a violation of the spirit of the National Labor Relations Act, and more particularly, of the provisions of the Doyle-Neustein Bill, which he termed a little Wagner Act, which was then pending in the Legislature of the State of New York and appeared almost certain of enactment. He informed them that therefore he intended to recognize the I. B. E. W. In response to questions from the floor, Carlisle declared that employees were free to join any labor organization, but that the respondents intended to recognize the I. B. E. W. Various comments from the floor indicated that the Plan repre-

sentatives considered the sudden recognition of the I. B. E. W. as a means of coercing them into transferring their allegiance to the I. B. E. W. Carlisle refused the request of several Plan representatives for a delay of the recognition of the I. B. E. W. until the employees had had an opportunity to discuss the matter.

Harold Straub, chairman of the general council of the Plan at Bronx Gas and Electric Company asked
275 Carlisle whether it was not true that he had hitherto considered unions as unnecessary evils, but now, in view of the United States Supreme Court decisions and the pending Doyle-Neustein Bill, as necessary evils, and as between the I. B. E. W. and the United he preferred that the employees join the I. B. E. W. Carlisle said that this was a very apt statement of his position. Straub testified that Carlisle stated to him also that he thought that the Labor Relations Board of the State of New York would be composed preponderantly of men in sympathy with the American Federation of Labor and hence that it was the part of wisdom to recognize the I. B.
276 E. W. When Carlisle, himself, testified, he was not specifically questioned on direct examination concerning Straub's testimony on these particular points. Straub also asked Carlisle why recognition was being accorded the I. B. E. W. when its membership among the respondents' employees was negligible. Carlisle replied that the I. B. E. W. had some members and would soon have a great many more. Carlisle, himself, testified that at the time he recognized the I. B. E. W. he knew that its organization among the respondents' employees was incomplete and that the formation of locals and the procurement of membership was to follow recognition and that when that was accomplished contracts with the

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various locals would be executed. He also testified that at this time he knew that the members of Local B-752 had transferred their allegiance to the United which had commenced a vigorous campaign for membership. It is quite clear that recognition of the I. B. E. W. under these circumstances was intended as a blow to the United, as an aid to the I. B. E. W., and as a strong indication to the employees of the union favored by the respondents.

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After Carlisle left the conference he dispatched a letter to Tracy recognizing the I. B. E. W. along the lines of the proposed contract. News of this letter appeared in the early afternoon papers, which led many of the Plan representatives to believe that he had formally recognized the I. B. E. W. even before he had called the conference of general councilmen. The conference continued for a time after Carlisle's departure, and speeches were made characterizing recognition of the I. B. E. W. as a design to force the employees into the I. B. E. W. Upon the adjournment of the conference, the general councilmen proceeded to a meeting of the general council of Consolidated Edison Company of New York, Inc., where the chairman narrated the above events. The general opinion of this meeting also was that recognition of the I. B. E. W. was intended to force membership in the I. B. E. W.

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On the afternoon of the same day, Straub called on Colonel Stilwell, vice-president of Consolidated Edison of New York, Inc., with whom Straub, as chairman of the general council of the Plan at Bronx Gas and Electric Company, had discussed Plan matters since the merger of the latter company in 1936 into Consolidated Edison Company of New York, Inc. Stilwell said that recognition of the I. B. E. W. would be a blow to the Com-

mittee for Industrial Organization, of which the United was an affiliate, and was so intended, and that it would be a wise move for the Plans and the employees to go over to the I. B. E. W. and obtain control of it. Upon Straub's request he gave him the name and address of G. M. Bugniazet, International secretary of the I. B. E. W., with whom he could confer concerning ways and means of switching the Plan at Bronx Gas and Electric
281 Company over to the I. B. E. W. The following day Straub called at the address, but merely discussed the aims and policies of the I. B. E. W. with a representative of the I. B. E. W. Later that same day Straub called a meeting of a number of members of the Plan at the Bronx Gas and Electric Company and informed them of his actions. He found among them a strong sentiment for the United and for an independent union with no outside affiliation, while several of them complained that their foremen were applying pressure in behalf of the I. B. E. W.

On the following day, April 22, a conference of 400
282 employees, mostly members of the various general councils, who, as we have already indicated, were always free to leave their work for Plan affairs, was held in the auditorium of Consolidated Edison Company of New York, Inc., building on Irving Street. Carlisle had been invited to attend, and while awaiting his arrival the men discussed the matter. Three views were presented. Some favored the I. B. E. W., others the United, and others an independent union with no outside affiliation. A motion for a secret ballot on the question among those present at the conference was carried. William P. Ganley, co-chairman of the general council of the Plan at Consolidated Edison Company of New York, Inc., and

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presiding officer of this meeting, took no action, however. The meeting was adjourned to the company's cafeteria where Ganley read a telegram from Tracy indicating the manner in which the various Plans could come into the I. B. E. W. as locals with the Plan officers as officers of the locals. The meeting growing somewhat restive, a messenger was sent to summon Carlisle. Upon his arrival Carlisle was subjected to such a barrage of questions that the procedure was adopted 284
of formulating three questions which were addressed to Carlisle by Ganley. The questions and answers were substantially as follows:

> Question: Could a vote be taken among the respondents' employees on the matter?
>
> Answer: If such a vote implied that the respondents would bear the expenses of the election, it could not.
>
> Question: Would he stop department heads and foremen from coercing employees into joining the I. B. E. W.?
>
> Answer: Since he had not issued any order to 285
> do so, he would not issue any order to stop.
>
> Question: Why were I. B. E. W. organizers allowed to enter the plants and solicit employees during working hours while United organizers were denied that privilege?
>
> Answer: The respondents have never policed their buildings and did not intend to begin now.

A shout from the floor accusing Carlisle of having "sold 40,000 employees down the river" evoked considerable applause.

Carlisle departed and shortly thereafter, upon ad-

286 journing, Ganley announced that there would be another meeting on the following day for the purpose of forming an independent union. A meeting for such purposes was apparently never held, but a meeting of the general councilmen of the Plan at Consolidated Edison Company of New York, Inc., called by Ganley, was held in the board room of the company. At this meeting, Ganley and a number of Plan officials decided to see Tracy at
287 the Hotel Roosevelt in New York City. Tracy informed them that the I. B. E. W. intended to establish seven locals and that each of the Plans could shift over to the I. B. E. W. as a corresponding local, retaining Plan officers as officers of the local. The Plan officials returned to the meeting and 22 general councilmen signed a petition for an I. B. E. W. charter. They then went back to Tracy and a local was chartered. Such was the birth of Local B-829. Thereafter, on May 4, 1937, the 22 signers of the petition held an election among themselves and elected the officers of the Plan to comparable positions in Local B-829.

288 After Local B-829 was chartered on April 23, the officials and councilmen of the Plan at Consolidated Edison Company of New York, Inc., availing themselves to the full of their privileges as Plan officials to devote full time to Plan affairs, commenced a campaign for membership in the I. B. E. W. and were paid their regular salaries by the company. Straub, at first attracted by the idea of going over to the I. B. E. W., grew lukewarm. In the election of May 4, he refused a position as an officer in Local B-829, but continued to assist in procuring members and collecting dues, devoting a large portion of his working hours to the task and receiving his regular salary from the company. He was re-

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proached by Ganley, who had become president of Local B-829, for lack of enthusiasm. Finally, on May 14, he joined the United.

In his talk with Stilwell on April 20, Straub had asked to be transferred to a job under different supervisors, but still in his home area, The Bronx, because in his capacity of chairman of the general council he had antagonized certain supervisors who, upon the dissolution of the Plan, would make it uncomfortable for him. On May 21, 1937, he was transferred to cable-splicing in Manhattan. Upon inquiry he was informed that the transfer was the result of large shifts of workmen in the respondents' system. In this fashion, after he had joined the United and proved himself an obstacle to I. B. E. W. organization in The Bronx, he was transferred from his home area where his influence with the employees was greatest.

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The establishment of all the locals of the I. B. E. W. substantially conformed to the pattern of the establishment of Local B-829, with most of the officers of the Plans throughout the respondents' system becoming officers of the corresponding I. B. E. W. locals and continuing to exercise their privileges as Plan officers for several weeks after the I. B. E. W. locals were chartered, devoting all their working hours to I. B. E. W. organization, using the respondents' offices and secretarial services, and utilizing the respondents' expense accounts. During all this time they were paid their regular salaries by the respondents.

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Evidence specifically adduced at the hearing discloses that the respondents pursued additional methods of coercing their employees into membership in the

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I. B. E. W. The department heads and foremen during working hours solicited employees to join the I. B. E. W., and generally assumed the role of I. B. E. W. organizers. The sanction behind the solicitation was clearly revealed in the accompanying advice and admonitions to the effect that the respondents desired them to become members of the I. B. E. W. and that sensible employees would conduct themselves accordingly.

293 The respondents allowed to I. B. E. W. organizers free access to all the respondents' buildings and permitted them to solicit employees individually and in groups during working hours, while similar privileges were denied to United organizers. I. B. E. W. delegates were also permitted to collect dues on the respondents' premises. They availed themselves, for that purpose, of offices of foremen or other offices or rooms and, in some instances, hung signs upon the doors bearing the legend "Pay A. F. of L. Dues Here." Later the practice of hanging up such signs was discontinued and foremen adopted the practice of telling the employees to go down
294 to some office on the premises and pay their dues. Similar privileges were denied to the United.

I. B. E. W. officers remained in the employ of the respondents, exercising their Plan prerogatives in behalf of the I. B. E. W., for several weeks, and it was only shortly prior to the execution of the contracts between the respondents and the I. B. E. W. locals that they resigned from the respondents' employ to become full time I. B. E. W. officers paid by the I. B. E. W. Carlisle testified that the respondents permitted the Plan officers to retain their offices and to exercise their prerogatives in order to give them an opportunity to wind up their affairs. It appears from the evidence, however, that the

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respondents knew that the Plan officers had shifted over to the I. B. E. W. and had utilized their Plan prerogatives in behalf of the I. B. E. W. Moreover, it is clear that the respondents had intended as much. Carlisle also testified that he had given no orders to the respondents' department heads and foremen to act in behalf of the I. B. E. W. Express orders, however, were unnecessary as the respondents' position had been made abundantly clear, with the result that their supervisors took the steps appropriate for its attainment.

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The evidence reveals the delineations of the respondents' design to dictate to their employees the choice of their bargaining representative. The first step was to favor the I. B. E. W. by according it recognition at a time when its membership was negligible and its organization hardly commenced and when the respondents knew that the United was the only active labor organization among its employees. The next step was to deliver over the Plan organizations to the I. B. E. W. by making the respondents' position in the matter clear to the Plan representatives. Then followed the organizational drive in behalf of the I. B. E. W. by department heads, foremen, and Plan representatives, leading up to the stage of organization contemplated by Carlisle and Tracy as sufficient to justify the execution of contracts.

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C. Execution of the contracts with the I. B. E. W. locals

After the I. B. E. W. had established its seven locals and had procured a membership therein, the respondents, in the period between May 28 and June 16, the latter date being subsequent to the commencement of

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the hearing, entered into seven substantially similar contracts with the seven I. B. E. W. locals.[2] The contracts conformed in most respects to the proposed contract which accompanied Tracy's demand for recognition on April 16. The contracts in terms recognized the I. B. E. W. as the representative of its members and were applicable only to such members.[3] The contracts also provided for certain wage increases and a proce-
299 dure for settling grievances which outlawed strikes and lockouts, and prohibited discrimination by the respondents against any employee because of membership in the I. B. E. W. and coercion by the I. B. E. W. of any

[2] The contracts were executed on the following dates:

1. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B830, applicable to gas workers. Respondents' Exhibit No. 17.
2. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B829, applicable to electric workers. Respondents' Exhibit No. 18.
3. May 28, 1937—Contract between Brooklyn Edison Company, Inc., and Local B-825. Respondents' Exhibit No. 19.
4. June 1, 1937—Contract between New York and Queens Electric Light and Power Company and Local No. B-839. Respondents' Exhibit No. 20.
5. May 28, 1937—Contract between Westchester Lighting Company
300 and The Yonkers Electric Light and Power Company and Local No. B-832. Respondents' Exhibit No. 21.
6. June 16, 1937—Contract between New York Steam Corporation and Local No. B-826. Respondents' Exhibit No. 826.
7. The respondents did not introduce into evidence the contract executed between Consolidated Telegraph and Electrical Subway Company and an I.B.E.W. local, but stated that the contract was substantially similar to the above contracts and executed during the same period.

[3] Recognition of the I.B.E.W. was accorded by the particular respondent granting the contract in the first sentence of Article II of each contract, as follows:

> "The * * * Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of The Brotherhood."

The statement of the applicability of each contract is contained in Article I thereof, as follows:

> "This agreement shall apply to all employees of the * * * Company who are members of the Brotherhood * * *."

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employees into joining the I. B. E. W. or solicitation of membership on the respondents' time and property.

Carlisle testified that he was aware that when recognition was conferred upon the I. B. E. W. on April 20, 1937, it had not as yet completed its organization and that such recognition contemplated the establishment of locals, with committees of which contracts would be subsequently executed. He further stated that at the time of the execution of the contracts he was in possession 302 of no definite information concerning the size of the membership in each local, except newspaper reports. He admitted that the I. B. E. W. did not discuss the matter at that time. It was only on July 29, 1937, after the contracts had been made and the presentation of the Board's case in the hearing herein completed, that the I. B. E. W. submitted a statement[4] of its membership to him. This consisted merely of a typewritten statement showing the number of eligible employees and the number of members in each local. The statement indicated that a majority of the employees eligible for membership in each local were members of the local, except in the 303 case of Local B-829, to which were eligible 13,200 electric employees of Consolidated Edison Company of New York, Inc. This latter exception has particular significance in view of Carlisle's construction of the contracts as exclusive collective bargaining agreements.

Carlisle testified that the contracts were applicable to all employees and were exclusive collective bargaining agreements, *i.e.*, that the respondents would not enter into collective bargaining agreements with any other labor organizations during the existence of the contracts.

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[4] Respondents' Exhibit No. 16.

He thus in effect admitted that he had recognized and entered into contracts with the I. B. E. W. locals as the exclusive bargaining representatives of the respondents' employees at a time when he did not know the size of their membership and when even as late as June 29, Local B-829 did not have a membership of a majority of the employees within its jurisdiction.

It is clear from the evidence that the contracts were not the result of unhampered bargaining, but were rather the culmination of a plan by the respondents to select the I. B. E. W. as the exclusive representative of the respondents' employees and at the same time deal a blow to the United which they opposed. Carlisle's interpretation of the contracts, despite the express limitation of the representation of the I. B. E. W, to its own membership, discloses the force of the blow dealt the United, namely, the denial of the opportunity to bargain collectively with the respondents during the life of the contracts.

D. Conclusions as to the respondents' relations with the I. B. E. W.

We conclude that after April 12, 1937, the respondents deliberately embarked upon an unlawful course of conduct, as described above, which enabled them to impose the I. B. E. W. upon their employees as their bargaining representative and at the same time discourage and weaken the United, which they opposed. From the outset the respondents contemplated the execution of contracts with the I. B. E. W. locals which would consummate and perpetuate their plainly illegal course

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of conduct in interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to them under Section 7 of the Act. It is clear that the granting of the contracts to the I. B. E. W. by the respondents was a part of the respondents' unlawful course of conduct and as such constituted an interference with the rights of their employees to self-organization. The contracts were executed under such circumstances that they are invalid, notwithstanding that they are in express terms applicable only to members of the I. B. E. W. locals. If the contracts are susceptible of the construction placed upon them by the respondents, namely, that they were exclusive collective bargaining agreements, then, *a fortiori*, they are invalid.

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In order to establish conditions for the exercise of an unfettered choice of representatives by the respondents' employees, the respondents will be ordered to cease and desist from giving effect to the contracts with the I. B. E. W. locals, from recognizing the I. B. E. W. as the exclusive bargaining representative of their employees, and from their other unlawful conduct; and to post notices that they will so cease and desist, that their employees are free to join any labor organization, and that the respondents will bargain collectively with any labor organization entitled thereto.

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E. Employment of Industrial Spies

The complaint alleges that the respondents had employed and were employing industrial spies or undercover operatives for the purpose of disclosing to them the activities of their employees in and on behalf of labor

310 organizations. The respondents admitted the employment of detectives, but denied that it was for the purpose of investigating the union activities of their employees. The respondents asserted that in any event the employment of detectives did not extend beyond November 1936 and that consequently the controversy on this issue has become moot.

311 Uncontroverted evidence discloses that the respondents engaged the detective services of Railway Audit and Inspection Company, herein called the Inspection Company, from October 1933 through October 1936. The manager of the New York office of the Inspection Company testified that the services rendered to the respondents included investigation of the union activities of the respondents' employees. Frequently the respondents would send circulars, leaflets, and other literature to the Inspection Company for investigation by its detectives. Among the various types of literature of this character were included the circulars and leaflets of the Independent Brotherhood, some of which contained the names of
312 the leaders of that organization. Detectives of the Inspection Company also covered several of the meetings and conventions of the Independent Brotherhood throughout the year 1935. The Inspection Company made reports of its investigations and delivered them to the respondents.

The manager of the Inspection Company and one of the detectives who did the investigating, testified that detectives trailed Stephen L. Solosy, named in the complaint, and Philemon Ewing, both organizers for the Independent Brotherhood in Manhattan, in April 1935. The detective who trailed Solosy was given a picture of

him and told to trail him, which he did for two days, after which time he was replaced by another detective whose report was delivered to the respondents. Solosy was unaware that he was being shadowed, but Ewing was exasperated by the ineptitude of the detective who trailed him and finally turned around and entreated him to perform his duties with more adroitness. Both Solosy and Ewing were discharged on January 17, 1936, and as we find below, one of the factors leading to Solosy's discharge was the report of his activities made by the Inspection Company. The respondents apparently still have in their possession the reports of the Investigation Company and so have the power to utilize them as a basis for future discriminatory action against their employees.

The respondents' contention that the controversy is moot on this issue because the evidence does not show that the respondents employed the Inspection Company for any purposes after November 1, 1936 is without merit. The evidence clearly discloses that the respondents engaged in an unfair labor practice for three years, up to a time not long prior to the filing of the charge herein. A discontinuance at that time of hiring one outside detective agency for that purpose is no assurance that the practice may not have been carried on by other outside agencies or by the respondents' own employees, or that the practice will not be resumed in the future. The respondents have not stipulated that they would not engage in this practice, but on the contrary have from the outset denied the jurisdiction of the Board to take any action in this proceeding.

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F. The Discriminatory Discharges

1. *Wersing, Greulich, and Wagner*

The complaint alleged that on November 29, 1935, the respondents discharged, and thereafter refused to reinstate, Martin A. Wersing, Julius A. Greulich, and Michael A. Wagner, because of union activities. The
317 answer avers that they were discharged for other reasons. Since all three men were employed by New York and Queens Electric Light and Power Company, performed substantially similar work, were the organizers and officers of Local No. 103 of the Independent Brotherhood, were discharged at the same time, and were given the same explanation for their discharge, we will first narrate the employment history of each of them and then discuss their union activity and discharges as a group.

Wersing. Wersing began work for the respondents on October 8, 1929, as a second grade clerk at a weekly salary of $22.00. All his work was performed during
318 the night. After about six months he was transferred to other night work called "cut in and cut out," which involved making initial and final bills on consumers' accounts. Two months thereafter he received the regular two dollar weekly salary increase which followed upon a satisfactory probationary period. In 1933 he was transferred to day work at the personal request of J. Smith, a supervisor. Wersing found the work dull and about eight months later was transferred back to night work. Early in 1935 he filed an application for a day work position in response to a posted notice that the position was available. The position was obtained by an employee with less seniority than Wersing. A committee of the Inde-

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pendent Brotherhood took the matter up with the respondents and were informed that Wersing had filed his application too late. Subsequently, in May 1935, he was transferred to day work in the stores accounts division of the auditor's department. Although he replaced an employee with a first grade clerk rating, his own rating continued as second grade clerk. He brought this fact to the attention of his supervisor and later of the personnel bureau, from which he received a final, unfavorable communication about two weeks before his discharge.

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While Wersing was not an exceptional employee, he performed his duties competently. When he was employed on night work his supervisor conferred some responsibility upon him and allotted to him the instruction of new employees as an additional duty. His supervisor on the work which he was performing prior to his discharge considered his work satisfactory. At the time of his discharge his weekly salary was $23.00. A general reduction in pay in 1933, which was not fully restored, accounts for the fact that his salary was less at this time than at an earlier stage of his employment.

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Greulich. Greulich began his employment with the respondents on October 3, 1929, as a clerk at a weekly salary of $25.00. He received the customary two dollar weekly salary increase after six months' employment. In 1933 his pay was reduced 8⅓ per cent in conformity with the general pay reduction enforced throughout the respondents' system. In May 1934, one-half of the pay reduction was restored. Thereafter his weekly salary was increased to $27.00 as a result of a reclassification of his position. He received an additional increase in salary subsequently, so that at the time of his discharge his weekly salary was $28.75.

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Greulich, like Wersing, worked in the stores accounts division of the auditors' department. Greulich devoted a large portion of his time to writing letters in response to a particular kind of correspondence and was the only one in the division performing that type of work. He also performed the added task of checking the work of twelve girls. He was never disciplined or suspended, but, on the contrary, was commended by his supervisor,
323 at whose request he undertook to write items for the respondents' magazine.

Wagner. Wagner began his employment with the respondents on July 23, 1929, as a first grade clerk at a weekly salary of $27.00. Six months thereafter he received the regular two dollar increase in salary. In March 1931 he was advanced to the position of accounting assistant in the fixed capital division of the auditors' department at a weekly salary of $32.00. His work consisted of preparing the monthly authorized fixed capital expenditure reports. He was the only one in the department who performed the work on the figures. In No-
324 vember 1934, he received an increase of $3.83 in his weekly salary as a result of reclassification of his position. At the time of his discharge his weekly salary was $34.50.

Wagner's work was frequently commended by his supervisors. The respondents admitted and their records show that Wagner was rated as an exceptionally able and diligent employee.

Their union activity. All three men became members of the national organization of the Independent Brotherhood in February 1934. Thereafter they organized Local No. 103 among the employees of New York and Queens

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Electric Light and Power Company. In July 1934 Local No. 103 held its first meeting, at which Wersing was elected acting president and Greulich and Wagner were elected to the Executive Board. Throughout the year 1934 they were actively engaged in securing membership and in distributing circulars, leaflets, and a magazine called "The Tower Man", all issued by the national organization of the Independent Brotherhood. They became members of the Plan in April 1934, but Wersing re- 326
signed therefrom in December 1934, and Wagner in the early part of 1935. In September 1934 they formulated a petition of grievances, concerned chiefly with the restoration of the general pay reduction, which was finally presented to the management by a committee appointed by the general council of the Plan, after much persuasion by Wersing, Greulich and Wagner. They asserted that the restoration in 1934 of one-half of the 8⅓ per cent pay reduction was induced by their activity for wage increases. Thereafter they persistently attacked the Plan as a company-dominated union. In February 1935 Wersing was elected president of Local No. 103, Greulich vice- 327
president, and Wagner treasurer. After their election to these offices they informed their supervisors of that fact by letter and received either written or oral acknowledgment of their letters. Thereafter Local No. 103 issued its own leaflets, circulars, pamphlets, and a monthly magazine called "Live Wire", attacking the Plans, listing grievances against the respondents, and explaining its own aims and policies. A number of articles appearing therein were over the signatures of Wersing and Greulich who wrote most of the Local's literature of this character. They also were actively engaged in soliciting membership by visiting employees at their homes. All this activity

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continued throughout 1935, and if anything, was intensified shortly prior to their discharge.

In March 1935 Wersing and Greulich conferred with Harry Snyder, president of New York and Queens Electric Light and Power Company, with respect to the assignment of an employee with less seniority to a day work position for which Wersing had applied, as related above.
329 In August 1935 Wersing became President of the joint board composed of representatives from all the Independent Brotherhood locals in New York City. In the fall of 1935 there were rumors of impending lay-offs. Local No. 103 and the joint board, under the guidance of Wersing, Greulich, and Wagner, undertook to prevent the impending lay-offs by appearing at rate hearings before the Public Service Commission, by writing to Governor Lehman, Mayor La Guardia, and Chairman Maltbie of the Public Service Commission. They also issued a considerable quantity of literature in opposition to the impending lay-offs.

330 Just prior to their discharge there appeared in the "Live Wire" a signed article by Wersing entitled "Turkeys or Lay-offs for Thanksgiving". About two weeks prior to their discharge Greulich, who was still a member of the Plan, appeared at a meeting of the Plan members to distribute Independent Brotherhood literature and was promptly ushered out by Plan officials. The next day his supervisor, without especial rancor, informed him that he did not consider his actions on the preceding day as strictly ethical. On November 15, 1935, a committee composed of Wersing, Greulich, and Wagner, had a conference with Harold Dean, vice-president and general manager of New York and Queens Electric Light and Power

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Company, concerning the discharge of James Mannix, an active member of the Independent Brotherhood. They were satisfied with the reasons given for his discharge and did not press the matter further. Dean, however, expressed a strong antipathy to the presumption of the committee in attempting to interfere with the exercise of his discretion to discharge employees.

Thus immediately preceding their discharge their union activity had become intensified, while the chief result of their interview on November 15 with Dean, who was in charge of the execution of the respondents' labor policy at New York and Queens Electric Light and Power Company, was the likelihood that the memory of a disagreeable episode would linger in Dean's mind.

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Their discharge. All three men were discharged on November 29, 1935, without notice, but receiving two weeks' pay in lieu of notice. Wersing and Greulich, who both worked in the stores account division of the auditors' department, were notified of their discharge at the same time by their supervisor, who told them to see Mr. Payne in the Personnel Bureau. When they arrived in Payne's outer office the next morning, they saw Wagner leaving Payne's office. Wersing and Greulich had separate interviews with Payne. The accounts of all three men of their interviews with Payne are substantially the same. Payne informed them that they were being laid off because the respondents were discontinuing a department and that it was necessary to absorb a portion of the employees employed in that department into other departments. He stated that married men were being given preference over single men and that since all three of them were single their turn to be laid off had arrived.

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Each of the three men pointed out that other single men and girls with less seniority were retained, and requested an explanation. Payne was unable to explain this fact. The respondents have not requested any of the three men to return to their employment.

The respondents maintain that the three men were laid off for the following reason. The inventory department was engaged in compiling reports required by the
335 Public Service Commission. A substantial number of the employees in that department were transferees from other departments. The department had grown into a body of 300 employees. In 1935 the Public Service Commission's requirements as to reports were so greatly reduced that the respondents found it necessary to discontinue or substantially reduce the department. In transferring employees from the inventory department back to other departments the respondents adopted the standard of favoring married men as against single men, all other things being equal. It was asserted that the discharge of the three men was the consequence of the appli-
336 cation of this standard.

The respondents' contention that the inventory department was being reduced and transfers of employees made to other departments, thereby causing lay-offs of employees in such other departments, is supported by the evidence. In August 1935, 25 employees were laid off as a consequence of the application of this policy, but no employees were laid off in the auditors' department. On November 29, 1935, the three employees were the only employees laid off in their respective divisions. Dean, in his testimony, did not explain why certain single em-

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general statement that the department heads in the exercise of their judgment, determined that a number of single employees with less seniority than these three men were more deserving of retention in their jobs because of special qualifications. Such an explanation, however, is unsatisfactory in the case of Wagner, at least. According to the respondents' own records he was regarded as an exceptionally able and diligent employee. In the application of the respondents' standard of preference to married men, other things being equal, Wagner would certainly not be the first and only man in his division to be laid off. Since he was laid off at the same time as Wersing and Greulich, his fellow officers in the Independent Brotherhood, a finding that he was discharged for union activity would be strong evidence that the other two men were discharged for the same reason.

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It is significant that by the discharge of these three employees the respondents eliminated from their employ all the officers of Local No. 103 at a time when their union activities were beginning to prove troublesome to the respondents. Dean's explanation for their discharge, particularly the discharge of Wagner, is inadequate and not persuasive, in the face of the retention of a number of single men and girls with less seniority in their divisions, and an even larger number in their department. The evidence indicates rather that the respondents unfairly utilized the lay-offs consequent upon the discontinuance of the inventory department as a means of discharging the three officers of the Independent Brotherhood, whom they wished to eliminate from their employ because of their union activity.

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We find that Wersing, Greulich, and Wagner were in

fact discharged because of their activities in the Independent Brotherhood. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

341 Since his discharge Wersing has devoted all his time to union affairs, and all his earnings from that time until the date of the hearing have been as a union officer. At the time of the hearing he was president of the United Local No. 1212 and chairman of the field representatives of the utilities division of the United. Greulich has been employed since March 1936, by the Federal Writers' Project. Wagner was out of employment until May 13, 1937, when he secured employment with a laundry company at a weekly salary of $17.00. All three men desire their jobs back. We find that Wersing, Greulich, and Wagner have not, since their discharge, obtained any other regular and substantially equivalent employment.

342 **2. *Kennedy and Emler***

The complaint alleged that on June 19, 1936, the respondents discharged, and thereafter refused to reinstate, William J. Kennedy and John F. Emler, because of union activity. The answer avers that they were discharged for other reasons. Both men were employed as linemen in the overhead bureau of New York and Queens Electric Light and Power Company, were discharged on the same day, and were given identical explanations for their discharge. We will relate the history of the employment and the union activity of each of them separately and then discuss their discharges as a single incident.

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Kennedy. Kennedy worked for this company during 1923 and 1924 as a meter-tester. He resigned and subsequently re-entered its employ on January 18, 1928, as a first grade lineman's helper at $29.90 weekly. In 1929 he became a third class lineman at $31.90. Thereafter he was advanced to the position of second grade lineman and in 1934 to that of first class lineman, in which position he was employed at the time of his discharge at a weekly salary of $40.48. His steady advancement is an indication of his competency as a workman. He had also gained experience in underground work and as a "trouble-shooter", the latter job ranking just above first class lineman. The respondent's employment records show that during the year prior to his discharge, Kennedy was absent from his work for more than normal periods, but this was caused by illness and time spent in a hospital. He testified that his illness arose out of the character of his work, which often involved working in muddy ditches during inclement weather, and that the respondents' own doctor treated him and advised him to go to a hospital.

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In 1934 Kennedy became a member of the Plan and was elected bureau representative for more than 300 employees in the overhead bureau. Shortly thereafter he became convinced that the Plan was a company-dominated union and was not hesitant about stating his views. In November 1934 he met Wersing, joined the Independent Brotherhood, and thereafter became very active in soliciting members. In February 1935 he was elected general manager of Local No. 103. At several meetings of the Plan in the early part of 1935 he spoke of the futility of the Plan. At approximately this time he sought to resign from his position as overhead bureau representative in the Plan. He communicated his inten-

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tion to his supervisor, who urged him not to resign as it would create an unfavorable impression toward the Plan. Kennedy yielded, but was later informed by the chief officer of the Plan that his supervisor had suggested expelling "that radical", Kennedy, from the Plan. At a meeting of the Plan held thereafter Kennedy taxed his supervisor with having uttered the above statement, which his supervisor parried with a query as to what other course was
347 open to him as a representative of the management. At a special meeting of the Plan held shortly thereafter, one of the respondent's officials made an address containing references to certain radicals and agitators. Kennedy arose and remarked that it was obvious that the references were addressed to him, and that if they denominated his activities agitation, then he was an agitator. The respondent's official then made some remarks about misinterpretation and dropped the matter. At the Plan election in June 1935 Kennedy refused renomination. In August 1935 he was elected president of the national organization of the Independent Brotherhood, resigning
348 from his position as general manager of Local No. 103, which was taken over by Wersing.

After the discharge of Wersing, Greulich, and Wagner, Kennedy was selected as chairman of a committee to negotiate with the respondent concerning the discharge of the three men. The committee had a conference with the president of the New York and Queens Electric Light and Power Company in December, 1935, at which Mayor La Guardia was present, but nothing was accomplished. The committee reported back to the members of Local No. 103, and were empowered by them to call a strike if necessary. Two representatives from the Labor Department of the

State of New York strove to obtain a settlement with the respondents, but were unsuccessful. Kennedy decided not to call a strike, as the Christmas season was considered inopportune. 349

In April 1936 the Independent Brotherhood affiliated with the I. B. E. W. and Kennedy resigned his presidency of the Independent Brotherhood to become a rank and file member of the I. B. E. W. He decided at this time to run again for office in the Plan. On June 11, 1936, he was elected representative for the overhead bureau. He was discharged a week later on June 19, 1936. 350

Emler. Emler began his employment with the respondent in July 1927 as a clerk at a weekly salary of $25.00. Shortly thereafter he was transferred to meter-setting at $27.00 weekly. At approximately six months' intervals he was advanced to lineman's helper in the overhead bureau, to third class lineman, to second grade lineman, and finally to first class lineman, the position he held at the time of his discharge at a weekly salary of $40.48. There had never been any complaints concerning his work and his steady advancement is testimony of his competency. 351

In April 1935 he became a member of the Independent Brotherhood. He devoted his spare time to organizational activity with Wersing and Greulich and talking in behalf of the Independent Brotherhood. In September 1935 he was elected to the executive board of Local No. 103. He was a member of the committee which negotiated for the reinstatement of Wersing, Greulich, and Wagner, and participated in the negotiations. He was also a member of the committee which in December 1935 was

352 empowered to call a strike. At that time he was advised by his foremen that it would be foolish to call a strike. He continued his union activities until the time of his discharge on June 19, 1936.

Their Discharges. On June 17, 1937, Kennedy and Emler, who were working on different field jobs, were informed by their foremen that Mr. Payne at the Per-
353 sonnel Bureau wished to see them. They had separate, but substantially similar, interviews with Payne. Payne informed them that he had bad news, that he had orders from the respondents to lay off "surplus employees", and that since they were surplus employees they were being laid off. Both men asked him the manner in which eight years of continuous service had achieved for them the status of surplus employees, but he was unable to explain. He told them that there was a possibility of securing work with Consolidated Edison Company of New York, Inc., and gave them the name of a personnel officer of that company. Both men called there that afternoon, but were
354 unable to see the personnel officer. The next morning they succeeded in obtaining an interview, at which they were questioned concerning their ability to perform certain technical electrical work. On learning that they were not qualified for such work, the personnel officer made some remarks about jobs as linemen's helpers at $30.00 a week, which were followed by the expression of his opinion that these jobs were probably all filled anyway. On June 19 they returned to Payne and were formally laid off, receiving their separation allowances of two weeks' pay for each year of service. Four other men were discharged during the same period, of whom two were union

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men and two were not. One of the nonunion men, Baake, received employment from Consolidated Edison Company of New York, Inc., while the other returned to his former job the next day. Kennedy testified that both he and Emler had seniority over a large number of employees in their bureau, and that they were the only first class linemen who were laid off, while there had been no prior discharges of first class linemen.

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In December 1936 Payne notified Kennedy of an opportunity to secure employment with another public utility company, New York Dock Company. Kennedy notified his union, which in turn notified Emler. Emler called upon Payne who told him to apply for work at the New York Dock Company, adding as a parting thrust that it would be embarrassing for the respondents if Emler resumed his "funny business" at his new job. Emler secured a lineman's job with the New York Dock Company, but at a weekly salary of $30.00, the salary paid to a lineman's helper by the respondents. He is still so employed at a weekly salary of $35.00. The respondents have not requested either Kennedy or Emler to return to their employment.

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The respondents contend that the discharges of Kennedy and Emler resulted from the reductions in the overhead bureau necessitated by the gradual change in the character of the work in Queens from overhead to underground. A number of the overhead workers were trained for underground work, while others had to be laid off. In this group were Kennedy and Emler. Dean, who testified to the above, did not adequately explain why Kennedy

and Emler were laid off, while men with less seniority were retained; nor did he adequately negative Kennedy's statement that after his discharge the men in the overhead bureau were placed on a six day week and that other men were transferred to his department.

It is most significant that the discharges occurred within a week after Kennedy's election as Plan representative for the overhead bureau. He had proved himself a source of trouble to the respondents when he previously held that position, and it was certain that he would now renew his activity within the Plan in opposition to the respondents' domination of the Plan. His election to that position, in spite of his open affiliation with an outside union, is an indication of the influence he wielded among the employees of the overhead bureau. Discharge would automatically terminate his membership in the Plan, or a transfer to another of the respondents' companies would automatically make him a member of the Plan of such other Company where he would not retain his position as a bureau representative. The evidence points to this as the true explanation for the course adopted by the respondents of giving him a choice between discharge and a transfer to an inferior position in another of the respondents' companies.

Emler was the last of the group associated with Wersing, Greulich, Wagner and Kennedy in the organization of Local No. 123 of the Independent Brotherhood. His discharge or transfer from Queens, coupled with that of Kennedy, would serve to remove the two principal, active union men who were associated with the three men origi-

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nally discharged. Payne's admonition to him in December 1936 not to resume his "funny business" at the New York Dock Company clearly indicates how long-lived was the recollection of Emler's union activities in the minds of his supervisors.

Although the evidence supports the respondents' contention that the overhead bureau was being gradually reduced because of the change in the character of the work in Queens from overhead to underground, we find that the lay-offs incidental thereto were merely utilized to screen the respondents' true motive. We find that Kennedy and Emler were in fact discharged because of their union activity. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

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Kennedy operated a private club after his discharge, but testified that it was a losing venture. Since March 1937 he has been engaged as a paid organizer in the utilities division of the Committee for Industrial Organization. Emler has been working for New York Dock Company since December 1936 at a lower salary than that which he received in the employ of the respondents. Both Kennedy and Emler desire to return to their former positions in the employ of the respondents.

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We find that Kennedy and Emler have not, since their discharges, obtained any other regular and substantially equivalent employment.

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3. Solosy

The complaint, as amended, alleges that the respondents discharged Stephen L. Solosy on January 17, 1936, and thereafter refused to reinstate him, because of union activity. The answer avers that he was discharged for other reasons.

365 Solosy commenced work in October 1928 as a tester in the laboratory of Consolidated Gas Company of New York, which is now Consolidated Edison Company of New York, Inc. He left this employment in November 1928, but returned to work in January 1929 and continued in the respondent's employ until his discharge. After having worked in the laboratory for the first four months at a weekly salary of $20.00, he was transferred to work on instruments known as Thomas calorimeter inspectors, which measured the B. t. u. content of gas. His job was concerned with maintaining, servicing, repairing, and overhauling those instruments. At that time there were twenty-seven such instruments, situated at different 366 places in the respondents' entire system. Solosy's work was thus performed in different places. He received periodic increases and at the time of his discharge was receiving a weekly salary of $33.54. No complaints or reprimands concerning his work were made. His steady increases in pay attest his competency.

Early in 1934 he became a member of the Federation of Architects, Chemists, Engineers, and Technicians, an independent union. Shortly thereafter he joined the Plan. The members in his department elected him and Philemon Ewing to head a committee to investigate the

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Plan. He served on this committee for three months, rendering monthly reports to the effect that the Plan was a company-dominated union. In the latter part of 1934 he and Ewing joined the Independent Brotherhood. Both of them did a great deal of organization work in Manhattan for the Independent Brotherhood. His activity became open and known to the respondents at least as early as March 1935. As we have stated previously, during April 1935 he was trailed by detectives, and re- 368
ports concerning his and Ewing's activities were filed with the respondents. In March 1935 Solosy and Ewing began to publish and distribute a monthly paper called the "Gas Man". Its last issue appeared in November 1936. Both Solosy and Ewing solicited employees at their homes for membership in the Independent Brotherhood, securing at least 25 members in the latter part of 1935. Solosy and Ewing were the only employees in their department who were vigorously engaged in union activity.

Solosy and Ewing were discharged at the same time 369
and in the presence of each other. Solosy was told that he was being laid off because the respondents were shutting down the "A" plant of the Astoria Light, Heat, & Power Company, thereby necessitating the laying-off of a number of employees. It appears that the "A" plant was in fact shut down, probably because of the decrease in the amount of gas sold. Solosy was not given previous notice of his discharge, but was given his separation allowance. He pressed his supervisor for further reasons concerning his discharge and received the following cryptic reply, "You know more about it than I do". In

answer to a question whether he would ever be called back, his foreman said that he thought not. The respondents have not requested Solosy to return to their employ.

It appears from the evidence that although there were a few others discharged at the same time with Solosy and Ewing, Solosy was the only one in his division who was discharged. There were only seven employees in his division. Solosy testified that of the other six employees
371 he had seniority over two.

It is significant on the one hand that Solosy and Ewing were the only active union men in their department and that their activities were investigated by detectives and reports of their activities filed with the respondents. On the other hand there is an absence of any adequate explanation for Solosy's discharge while two fellow employees with less seniority were retained. The evidence clearly indicates that the reduction of employees necessitated by the shutting down of the "A" plant was utilized as a screen to conceal the true motive for his dis-
372 charge.

When we consider all the six discharges involved in this case, it is apparent that the respondents succeeded in eliminating from their employ all the principal organizers and officers of the Independent Brotherhood. Their success was too complete to have been a consequence of the disinterested operation of reductions in personnel.

At the hearing the respondents were not allowed to introduce the testimony of Solosy's supervisors when offered at the continuance on July 6, 1937. The respondents offered no good reason for their failure to produce

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these witnesses at the close of the Board's case on June 24, 1937. They cannot complain of the Board's refusal to admit the testimony when the hearing was resumed two weeks later for the purpose of receiving the testimony of Carlisle and Dean.

We find that Solosy was in fact discharged because of his union activity. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

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Solosy has been unemployed since his discharge. He desires to return to his former position in the employ of the respondents. We find that Solosy has not, since his discharge, obtained any other regular and substantially equivalent employment.

IV. EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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Upon the whole record we find that the activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, transportation, and communication among the several States and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

376 *Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937*

Conclusions of Law

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. United Electrical and Radio Workers of America, and its predecessor unions, and International Brotherhood of Electrical Workers are labor organizations within
377 the meaning of Section 2 (5) of the Act.

2. Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy were, at the times of their discharges, and at all times thereafter, employees of the respondents, within the meaning of Section 2 (3) of the Act.

3. The respondents, by discriminating in regard to the hire and tenure of employment of Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy and thereby discouraging membership in United Electrical and Radio
378 Workers of America and its predecessor unions, have engaged in and are engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

4. The respondents, by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, have engaged and are engaging in unfair labor practices, within the meaning of Section 8 (1) thereof.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937 379

6. The respondents have not engaged in unfair labor practices within the meaning of Section 8 (2) of the Act.

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall: 380

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization; 381

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of

382 *Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937*

their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to
383 United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

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f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in con-

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certed activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

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b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other

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labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.

Signed at Washington, D. C., this 10th day of November, 1937.

J. WARREN MADDEN
Chairman

EDWIN S. SMITH
Member

DONALD WAKEFIELD SMITH
Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

Proof of Service of Board's Order of November 10, 1937 391

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the Committee for Industrial Organization.	Case No. C-245

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AFFIDAVIT AS TO SERVICE

DISTRICT OF COLUMBIA, SS.:

I, BERTRAM KATZ, being first duly sworn, on oath saith, that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 10th day of November, 1937, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

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Messrs. Louis B. Boudin & Sidney Elliott Cohn
8 West 40th St.
New York, New York

Whitman, Ransom, Coulson & Goetz,
40 Wall St.
New York, N. Y.

International Brotherhood of Electrical Workers
103 East 25th Street
New York, New York

BERTRAM KATZ.

Subscribed and sworn to before me this 10th day of November, 1937.

HAROLD G. WILSON,
Notary Public, District of Columbia.
(Seal) My Commission expires May 15, 1941.

394 *Proof of Service of Board's Order of November 10, 1937*

[Copies of receipts for registered mail delivery to Messrs. Whitman, Ransom, Coulson & Goetz, and Messrs. Louis B. Boudin and Sidney Elliott Cohn are omitted.]

The "Return Receipt" fo rregistered mail delivery as to the International Brotherhood of Electrical Workers is as follows:

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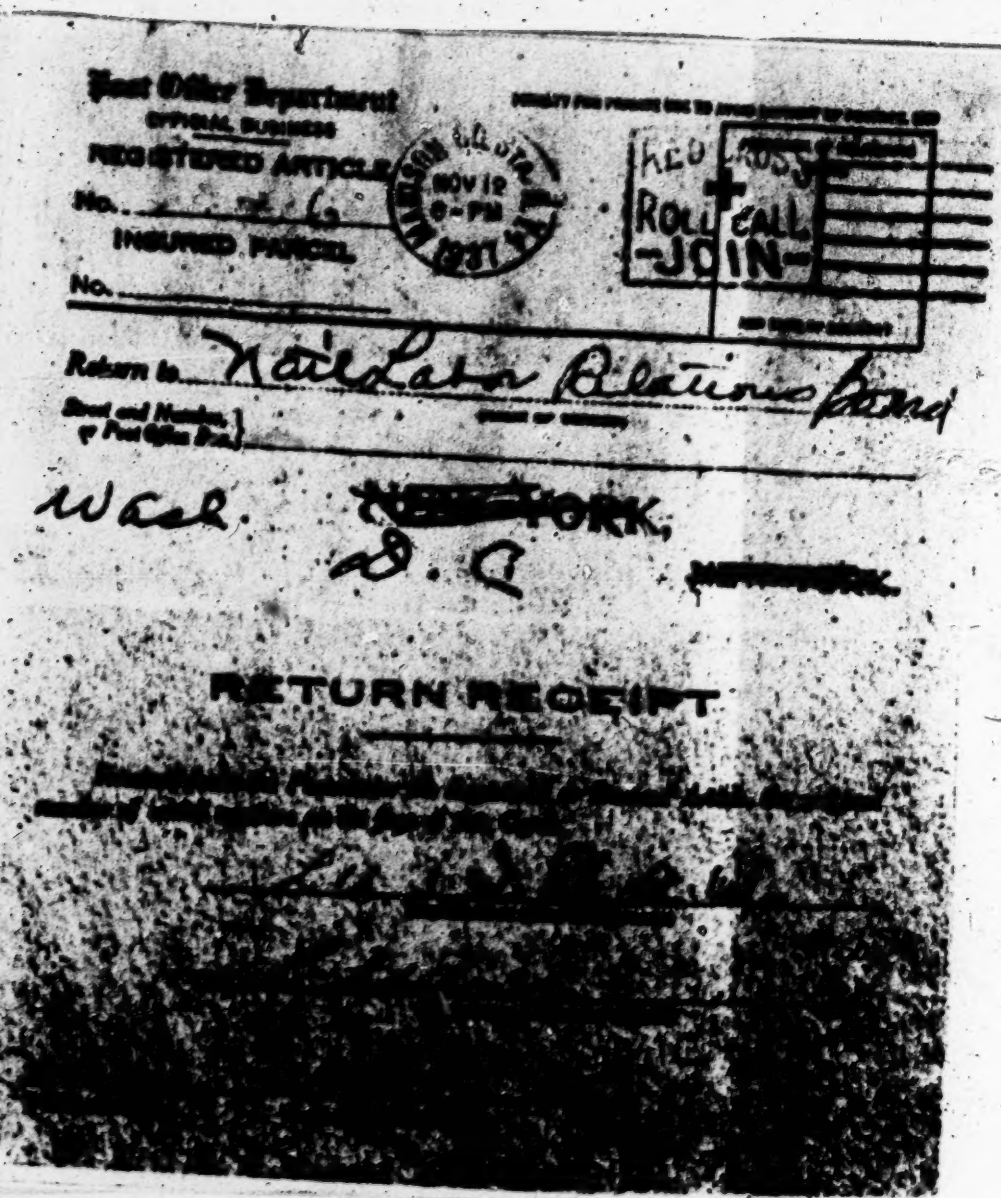
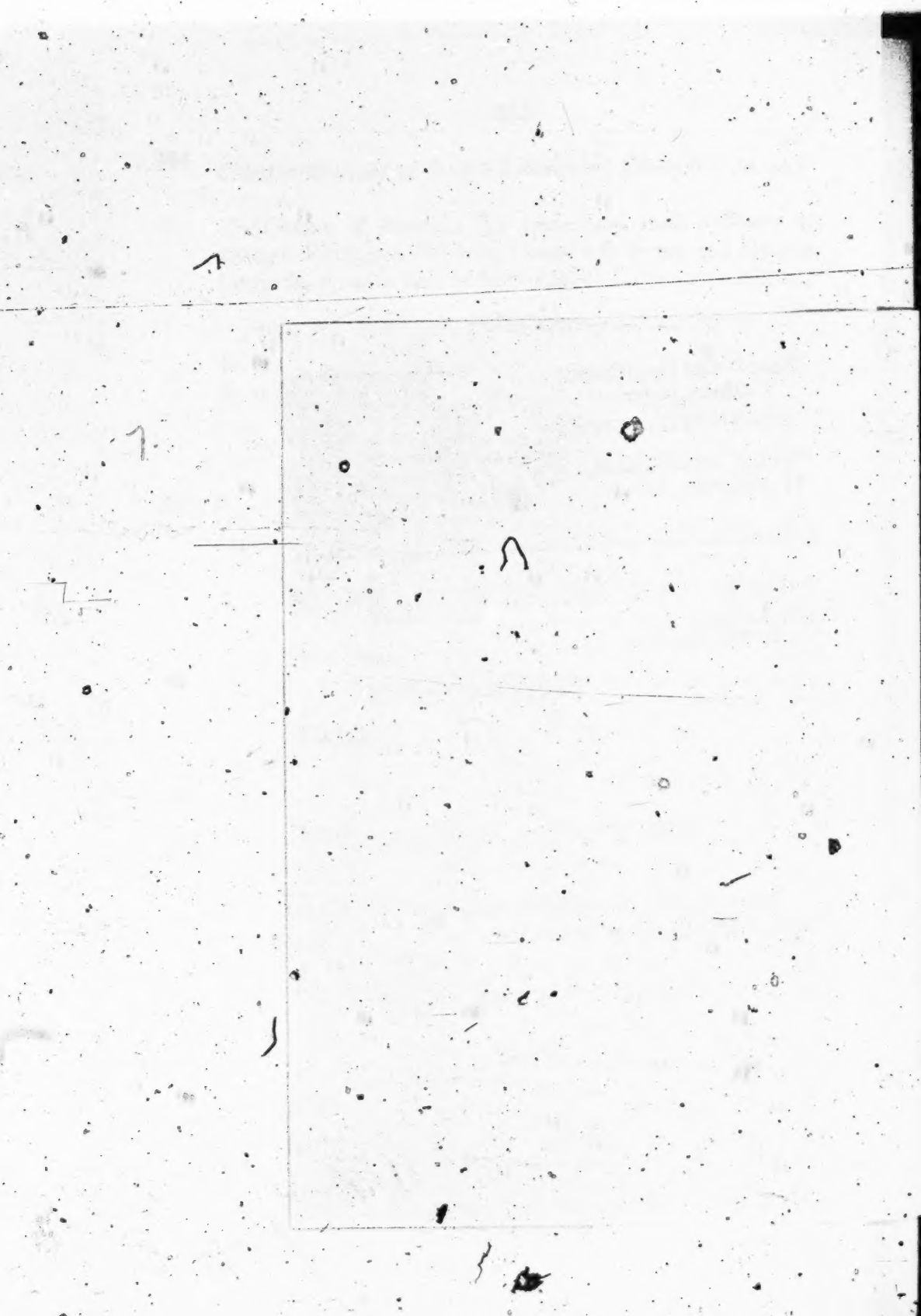

Post Office Department
OFFICIAL BUSINESS
REGISTERED ARTICLE
No. 66
INSURED PARCEL
No.
NOV 12 6-PM 1921
RED CROSS
ROLL CALL
-JOIN-
Return to National Labor Relations Board
Street and Number, or Post Office Box
Wash. NEW YORK, D. C.
RETURN RECEIPT



S. M. 1

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Minutes of Hearing Held June 3, 1937, before the Trial Examiner

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, BROOKLYN EDISON COMPANY, INC., NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY, *Respondents,* and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.	Case No. II-C 2[illegible]

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14 Vesey Street,
New York City, N. Y.,
June 3, 1937, 10:00 A. M.

The above-entitled matter came on for hearing pursuant to notice.

Before:

ROBERT M. GATES, Trial Examiner.

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National Labor Relations Board.

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WILL MASLOW, Esq., Attorney for the National Labor

Relations Board.

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers Local 1212.

Messrs. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City, N. Y. (By William L. Ransom and Pincus M. Berkson), appearing for the Respondent Companies.

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PROCEEDINGS

Trial Examiner Gates: Are you ready, Mr. Moscovitz?

Mr. Moscovitz: I would like first, Mr. Examiner, to have noted an appearance in association with me in the trial of this proceeding, the name of Mr. Will Maslow, attorney for the Second Region of the National Labor Relations Board. I don't know whether the other appearances have been already noted, but Mr. Louis Boudin and Mr. Sidney Elliott Cohn are here, representing the United Electrical and Radio Workers of America, the organization which filed the charge in this proceeding.

At this time, I offer as the first exhibit in this proceeding a certification under the signature of Mrs. Elinore M. Herrick, Director of the Board in this Region. The certification contains the pleadings in the case. You will notice that there is also attached to the certification a notice of motion to intervene filed by Mr. Emanuel Redfield, who is an attorney representing an independent group of employees presently employed by the Con-

NOTE: In printing the transcript of the hearings before the Trial Examiner of the Board, the numbering of the *pages* of the typewritten Stenographic Minutes of the hearings is also shown (e.g., S. M. ——), as well as the numbers of the printed pages. Where references are contained, in the testimony or in other documents, to pages of the Stenographic Minutes, these can be located by use of the page numbers shown for the S. M. paging.

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solidated Edison System. At the same time I offer with the certification, and make part thereof, a notice of motion to intervene, filed by Mr. Arthur A. Fink, who is counsel for the Independent Gas & Electrical Workers Union of Westchester County.

We received service of this notice of motion yesterday afternoon. I think it, too, should be admitted at this time.

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Is there any objection?

Judge Ransom: If the Board please, in behalf of the respondent companies, we make here only a special appearance. We are here subject to reserving our rights and only for the purposes which are stated in our notice of motion, which is a part of the certified transcript which Mr. Moscovitz has just offered in this record. Whatever participation takes place in these hearings in behalf of the respondent companies, is subject to that special appearance and the reservations stated in our notice of motion. I take it that this complete certification of papers for the record is offered as Exhibit No. 1.

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Mr. Moscovitz: Yes.

Judge Ransom: Subject to our special appearance and reservation of rights, we have no objection to the certification.

Trial Examiner Gates: The offer is admitted.

(Document referred to received in evidence and marked Board's Exhibit No. 1.)

Mr. Moscovitz: Before proceeding with the introduction of a stipulation, Mr. Examiner, I would ask if there is to be any argument in support of the two petitions to intervene in this proceeding?

Trial Examiner Gates: We will have a statement from the petitioners.

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Mr. Redfield: May I be heard now?

Trial Examiner Gates: Yes.

Mr. Redfield: I represent an organization of employees of the Consolidated Edison Company consisting, as I am advised, of about 8,000 alleged members. On or about May 10th—I should say this, that they are employees of the Consolidated System within Greater New York—on or about May 10th we filed informal charges with the Board complaining of the unfair practices of
407 the company. About two or three days thereafter the formal complaint issued against the company on the charge of the complainant in this proceeding. Now, for all purposes we might just as well have been the formal complainants in this action, and since we represent an interest of employees and have supported our charges by about ten affidavits of employees who are coming here to assist in this proceeding and, furthermore, we are ready and able to produce at least twenty more people in support of these charges and have been most militant in prosecuting these issues, and since our interest consists of about 8,000 members who have a potentiality of about
408 30,000 members, if the unfair practices of the company are abated, I feel we are entitled to a position as intervenor in this proceeding.

Trial Examiner Gates: Have you filed a charge with the—

Mr. Redfield: Board?

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Trial Examiner Gates: Mrs. Herrick?

Mr. Redfield: Yes, sir, we filed informal charges on May 10th and we were asked the very next day by Mr. Will Maslow to provide supporting affidavits and we furnished them and I think we furnished more affidavits

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than anybody in this proceeding and we have twenty more which we are offering to the Board, and since our membership is dependent upon the ceasing of these unfair practices, I believe we have a sufficient standing here to warrant us to intervene.

Judge Ransom: If the Examiner please, on behalf of the Companies, may I say this: It may not have yet come to your Honor's attention, but the respondents have pending before the Board, and I take it also pending here, a motion to dismiss the proceeding for want of jurisdiction over the respondents and the matters complained of. With respect to this application for intervention and any others that may be made, our desire is chiefly to preserve our rights and contention as to jurisdiction. Reserving those rights, we think, it is for the Board to say whether it wishes to admit this case at this stage as an intervenor one, an organization, who was not a party to the matters complained of in this cause and who so far as we know wasn't in existence at the time the matters principally complained of took place. Our desire is to stand upon our objection to the jurisdiction, both as to the hearing and determination of the original

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complaint and also the jurisdiction and power of the Board to admit at this stage an intervenor when the question of jurisdiction has not been determined.

Mr. Redfield: May I just make one addition, if you don't mind: I would like to add to my remarks that we filed our motion for intervention on or about May 21st.

Mr. Moscovitz: Would you want to hear us on the motion at this time, or would you rather hear both motions?

Trial Examiner Gates: I would rather hear both motions.

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Mr. Arthur A. Fink: I represent a Westchester unit known as the Independent Gas & Electric Workers Union of Westchester County. Now, this union is concerned purely with employees employed by the Yonkers Electric Light & Power Company and the Westchester Lighting Company. There are at the present time employed by both these companies approximately 2700 employees who would be considered employees entitled to be a part of a union according to the National Labor Relations Act. Of these 2700 we have at this time enrolled with us
413 approximately 1100. Now, this organization filed charges here about a month ago, by various of its members. Affidavits have been taken, statements are on file with the National Labor Relations Board, we are ready to substantiate every statement and, in fact, we have about a dozen additional statements ready to submit to the Board. Now, we are the only union in Westchester

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County at present active in so far as the Westchester Utility Employees are concerned. When I say "Utility" I mean those confined to the gas and electric business.
414 The various other unions, I will say at this time, have made very little headway in Westchester County. We are the only militant union in that group and we have no representation here by counsel or any other organization to take care of the rights of Westchester County employees, and that is the reason why we have filed our charges and we are intervening at this time.

Judge Ransom: May I say this as to this application on behalf of an organization of employees of those of the respondents who are in Westchester County?

Counsel for the respondent has had no notice or information of this application to intervene until it was made in the proceedings. Our position about this appli-

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cation is substantially what I stated here, as to the application of the organization represented by Mr. Redfield. We have no desire to contest the hearing of any representatives of any of our employees in a tribunal having jurisdiction. We reserve our rights as to jurisdiction rather than oppose the merits, if any, of the application for intervention.

Mr. Moscovitz: The Board opposes the petition for intervention by both Mr. Redfield and Mr. Fink. I do not think that the issue in this proceeding should be confused by the statements which have been made in

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support of the petitions for intervention. The only parties to this proceeding, as I see it, are the government and the Consolidated System. I think that it would be a mistake for the Board to establish precedent that in any proceeding where the public interest is being litigated, any group or any attorney should be permitted to come in as representing individual employees or groups of employees who find themselves within the same protective hand as that of those who filed the original charge. There is nothing inconsistent in that statement

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because the Board, as proceeding here, gives the same protection to the employees represented by Mr. Redfield and Mr. Fink as they do to the employees represented by the labor organization that filed the charge here.

I might also point out that the charge referred to by Mr. Redfield was of no legal effect, as I understand it, since not sworn to.

I might also point out that Mr. Fink filed no charges in this proceeding. In all fairness, I should say that both Mr. Fink and Mr. Redfield have been very cooperative with the Board in presentation of certain aspects of the merits of this case. I appreciate that cooperation,

and hope that it will continue, but I must point out once again that those employees which Mr. Redfield and Mr. Fink represent, who will be called to testify in this proceeding, will be called to testify by the government

S. M. 10

just as other employees will be called to testify by the government, and it is unnecessary for an intervention for protection of their rights. If the proceeding was one where a labor organization involved was going to
419 have its rights limited, or jeopardized by the affirmative action of the Board, then I would say that they would be right in most vigorously requesting intervention, so that the interests which might be possibly jeopardized or limited, could be adequately protected. That is not so in this proceeding.

May I also point out that there is no question of representation in this case.

Mr. Fink: May I say a word in reply, Mr. Examiner? If the argument is that because the Government's position is consistent with ours, is a valid argument, then I would say that in all cases of intervention, whether in
420 administrative matters or courts of law, there would be no use for intervention in such cases because in most cases where intervention is sought, the attitude of the intervenor is consistent with that of the, shall I say, claimant or complainant. Now, in our case, we could just as well have been the formal complainants as the United Electrical Workers. Why the Board did not act upon our charges in formulating its complaint is not to my knowledge. I don't think they tried to show partiality, but still our interest here is just as strong as that

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of the United Electrical Workers, and they appear here by counsel, too.

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Mr. Moscovitz: That is not—

Mr. Fink: And the United Electrical Workers appearing by counsel here have an interest as consistent with the Government as ours is, therefore, I think we should have a right to be represented by counsel as well as any other union. Certainly, when we have eight thousand pledged members, we have a strong interest.

Mr. Boudin: On behalf of the complainant, the United Electrical and Radio Workers' Union, we beg to say that we oppose both applications for intervention, as we believe it might lead to confusion and complicate 322
the issues involved. I do not care to enter into a discussion as to whether these organizations are as strong as their counsel have represented them to be. What is undoubtedly the fact is that either they have not chosen to file charges in time or have not pushed them vigorously enough so that they have not come up for this hearing, either with ours or ahead of ours. Interventions are usually granted in cases where some special interest is involved, that is not the same as complainants, or where there is danger—

Trial Examiner Gates: I do not believe it is necessary to have any more argument on this point. I will reserve decision on it. I do not believe it is vital at this 323
time.

Judge Ransom: For the record, I would like to make

formally here the motion of which a notice of motion has been served and is part of the transcript, namely, that the above named respondents, appearing specially and only for the purposes of the motions hereinafter set forth, hereby jointly and severally move that the Board dismiss the complaint and charge herein, and terminate the proceeding, upon the grounds that the National

Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject matter of the complaint and charge, and has no jurisdiction, power or authority over the respondents or over the subject matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "commerce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York, and not of the Federal Government, and that the legislature of the State of New York has, upon the recommendation of the Governor, passed an act entitled, "An Act to Amend the Labor Law, in relation to Establishing a Labor Relations Board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the Department of

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Labor," by which act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

I may say, in relation to the motion, which I do not propose to argue at this time, of course, that since the notice of motion was served, the measure passed by the legislature has since been approved by the Governor of the State of New York, and is now Chapter 443 of the New York State Laws of 1937.

May I also say this, subject to our reservation of rights: I do not express great confidence in my familiarity with your procedure. In our notice of motion, pur-

suant to appropriate sections of the rules and regulations of the National Labor Relations Board, we asked that the Board order that the complaint and charge herein and all the proceedings instituted in respect thereto, including the motion to dismiss, for want of jurisdiction, be transferred and continued before the Board in Washington, D. C., for the reasons this case involves a highly important issue as to the applicability of the National Labor Relations Act to the operations of the respondents in local and intrastate production, transmission, distribution, sale or delivery of electricity, gas or steam, or 428
in furnishing locally of intrastate facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such

operations, and that the importance of the issue, not only to the interested parties, but to the public, warrants and requires that the hearing and decision of this motion and any further proceedings herein be directly by the Board.

According to telegraphic advice received last night, the Board has denied that motion for the present transfer of this question of jurisdiction to itself and has ruled 429
and directed that the proceeding go forward and has held the question of the motion to dismiss for want of jurisdiction until there has been, as I understand it, a full hearing upon the complaint.

For the purposes of the record, I desire to have it show my objection and exception to that determination by the Board. The Board stated that the formal order of the Board would follow. That order has not as yet been received. I would like to reserve the right, if and when that order is received, it is necessary to make any further reservations, motions or objections, I may do so.

330 *Proceedings*

I presume that the future procedure as to this notice to dismiss is determined and controlled as far as your Honor is concerned by the action of the Board, which we have excepted to.

Trial Examiner Gates: That is correct. The motion made is dismissed and denied.

S. M. 15

Mr. Ransom: Well, the Board ruled that it was held in abeyance until there was a full hearing.

331 Trial Examiner Gates: Until there is a copy of that here—do you have a copy of the telegram?

Mr. Moscovitz: No, I have not.

Mr. Ransom: Unfortunately, I left my copy in the office, I can telephone for it.

Trial Examiner Gates: Well, it is not necessary to have it at this time.

Mr. Moscovitz: The only point that I raise is this: Does the telegram deny the motion to transfer the proceeding to the Board or does it also state that we must proceed completely in this case on jurisdiction as well as merits?

332 Mr. Ransom: It did not say anything about hearing completely but it said until a full hearing was had. As I recall the expression in the telegram, it said the motion is held in abeyance until a full hearing is had, and that the formal order follows.

Mr. Moscovitz: I offer at this time, Mr. Examiner, a stipulation entered into between Judge Ransom and myself which contains facts for the determination of the question of jurisdiction by the Board.

Mr. Ransom: You offer the complete stipulation?

Mr. Moscovitz: I offer the complete stipulation.

Trial Examiner Gates: It will be admitted.

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Mr. Ransom: Well, if your Honor please, just a moment. This stipulation, as your Honor will note, stipulates certain facts as a method of proof; namely, this is just as though witnesses testified to this matter, as wholly without prejudice to the right of any party hereto to object to the materiality and relevancy of any such facts and also without prejudice to our special and limited appearance.

There are certain paragraphs of the matter stipulated to which, for the purposes of the record, I wish to 434 object to their materiality and competency.

Paragraph 67, which starts on page 56, I wish to object to certain data therein set forth as to the contents of paragraph 67. There is set out in that paragraph under various sub-divisions stipulated facts as to service contracts between the respondent companies and Federal, State and Municipal governments. We object to the admission of those facts in evidence on the ground that they are immaterial and irrelevant to any issues herein; that the statute here, the National Labor Relations Act, is related to unfair labor practices which obstruct or affect commerce as defined in the Act and is 435 not related to acts affecting the activities of government, as such.

Likewise, we object to the materiality and relevancy of those other parts of paragraph 67 which state facts as to contracts with particular consumers who are singled

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out as themselves, to some extent, engaged in interstate as well as local commerce and communication.

We make objection to the admission of those stipulated facts on the ground that such matters are too remote and are wholly indirect and are outside the Act

and that the respondents aren't and cannot be brought within the Federal Act because some of their consumers are engaged in interstate commerce although the respondents are not.

We raise no question as to the competency of this method of proof in behalf of the Board, but we object to the materiality and relevancy of the matters contained in paragraph 67.

Mr. Moscovitz: Mr. Examiner, since the stipulation contains about 69 pages of printed facts and statistics
437 and it is quite obvious that you will not be in a position to read so large a document at this time, I would consider it valuable for our purposes here at this time to note exactly what, in summary, the stipulation is, if I may be so permitted.

In the first place, you will find a detailed description of the territory in the organization of the respondents.

Secondly, you will find the number of persons employed by the respondents totalling some 42,101, with a break down into proper working classifications; as well as the 1936 payroll of the respondents, which shows a total of some $81,891,000. Then there is a statement of
438 the respondent's scope of business and operations showing that the Consolidated Edison of New York supplied

in 1936 about 55.3 percent of the total gas supplied to the public of New York City and that the groups supplied in 1936 97.5 percent of the total electrical energy sold by the central station companies in New York City, and that the New York Steam Corporation is the only central gas station system utility operating in New York City, deriving its entire revenues from the sale of steam in the amount of some ten million dollars.

For 1936 there is a description and story of manage-

ment as well as a description of the manner in which it carries on its operations. This shows that the respondents constitute and are operated as a unitary and integrated system for the supplying of gas and electricity and steam service to consumers within parts of New York City and the County of Westchester. The major labor policies of the respondent companies are determined by the trustees of the group for the group and though locally administered by the executive officers of each company it is done in a manner not inconsistent with the general policies as determined by and for the 440 group.

Then there is a statement analysis and description showing that coal, oil and gas oil are purchased by respondents for the manufacture of electricity, gas and steam and that these essential raw materials are purchased by respondents from points without the state of New York and delivered to the plants of the respondents

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within the State of New York by rail, barge, and steamship; further, that copper is purchased in substantial quantity from points outside the State of New York as 441 well as cable and delivered to respondents within the State of New York.

It should be pointed out, too, here, that there is incidental to the manufacture of gas a recovery of coke, tar, light oils, and sulphate of ammonia as by-products. The proceeds of their sale are treated as an abatement of production expenses.

These by-products are sold to the purchasers in New York City and the products manufactured by the purchasers from such by-products are sold by them in trade and commerce. There is a submission of data as to particular consumers showing that the Consolidated Edison

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group of companies serve about 2,324,800 consumers with electric service and about 1,154,000 with gas. The consumers listed in the stipulations as using the gas and electricity are not to be considered as limiting the list which could be incorporated. It is simply tabled to give an idea of the kind of consumers involved and a picture of the indispensible connection. It is interesting also to note that electric service is supplied to the Federal government as in the case of where it is supplied to the general post office, United States Barge Office and the Interstate
443 Commerce Commission, as well as to the other Federal

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and State government agencies; that it is supplied to the Western Union Telegraph Company and the Postal Telegraph Company, which use such power for the operation of transmitting and receiving equipment for telegraph messages, both local and interstate; that it is supplied to the Radio Corporation of America for the operation of switchboards for trans-Atlantic radio service; to the New York Telephone Company for handling local and long distance communications as well as to the Dow-
444 Jones ticker service, and the service of the New York Stock Exchange; further, that there is similar service for the Floyd Bennett air field; the New York Times; certain companies operating electric ferries on the Hudson River as well as the railroad companies, including the New York Central, the New York, New Haven and Hartford, the Hudson and Manhattan and many others of the like.

The current supplied to the Hudson & Manhattan is used to operate the tubes from New York to Jersey City. That gives quickly and in short summary a picture as we see it of the important facts and high points included within the stipulation which has been introduced.

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Judge Ransom: In behalf of the respondents, we of course do not acquiesce in the necessarily incomplete but doubtless intended to be fair and indicative statement of Mr. Moscovitz, which he has made as to the stipulation in the respects, which appeal particularly to him from the

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viewpoint of the Government's case. At the appropriate time, under the action of the Board yesterday, I wish to call to Your Honor's attention, or to the attention of the Board, many of the things which are in the stipulated facts.

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The one matter which Mr. Moscovitz did not refer to, but I may be pardoned for referring to, is that of the last paragraph of the stipulation which relates to the New York State Labor Relations Act creating a New York State Labor Relations Board. The provisions of the Act in general resemble those of the Federal Act but in various respects go much further, and so for your Honor's convenience, without there being any need for it being made formally a part of the record, I will supply you with a copy of the official print of the measure which is now Chapter 443 of the Laws of 1937. For Your Honor's information in that respect, I think I should state for completeness that by its terms this Act becomes effective on and after July 1, 1937, and under the terms of the Act as drawn, the Board cannot be finally and officially created, at least until the 1st of July and could not exercise any powers or jurisdiction before that date, if it were informally brought into being before that date.

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My purpose in the two objections, which I made with respect to paragraph 67 of the stipulation was only to reserve completely our rights as to the bearings, if any, of the facts which we have been glad to stipulate with Mr.

Moscovitz to be facts, although we do not admit their bearing or affect upon this controversy.

Mr. Moscovitz: I think it should be noted, Mr. Examiner, by yourself, that the Act which becomes effective July 1, 1937, is not in its nature retroactive and of course it does raise a very serious jurisdictional question, we all admit that, but you cannot decide it and Judge Ransom and myself cannot decide it. All we can do is put in all the facts as we see them as adequately as we can and
449 then have the jurisdictional question decided by the Board.

I have nothing further to say.

Mr. Boudin: I would like to say in view of the statements made by Mr. Moscovitz that we all admit that the new Act may raise a serious question of jurisdiction and I, for one, don't quite agree to that broad statement. It seems to me that even if the Act were effective today, I doubt whether it would of necessity raise the question of jurisdiction in advance of the facts appearing here. Of course, after the facts appear in this case, it will be a question of jurisdiction but not necessarily because of
450 the existence of the State Act but because of the nature of the Federal Act. The mere existence of the State Act does not raise that question since it has been repeatedly decided that the State and the Federal Government have, in certain instances, concurrent jurisdiction and

that the existence of a State agency for regulating certain things did not necessarily mean that a Federal agency may not act in the same manner. I take it I needn't expatiate on that much longer.

Trial Examiner Gates: The stipulation is admitted.

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(Document referred to marked Board's Exhibit No. 2, was received in evidence.)

Judge Ransom: I respectively except on behalf of the respondents.

Mr. Moscovitz: I have a final offer to make, Mr. Examiner. I have here a publication issued by the Consolidated System in August of 1936 entitled "Serving New York, Electricity, Gas, Steam", which gives a graphic, dramatic picture of the operations of the companies involved in this proceeding, or that is, the respondents involved in this proceeding.

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I offer it at this time. I may say that it is not offered to in any manner vary or impeach the facts contained in our stipulation.

Mr. Ransom: If Your Honor, please, in behalf of the respondents, we most earnestly object to the admission of this pamphlet in evidence. We think it is incompetent and its receipt would be highly improper as to the method of proving facts in a quasi judicial proceeding, no foundation has been laid for its receipt in evidence for any purpose. Here is a somewhat colloquial and graphic description of various operations of the respon-

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dents. I may say, I think Mr. Moscovitz will not contest the statement, that this was thrown together last summer for a purpose of giving some visitors to this country from abroad, who came here upon invitation of the Federal government and private industry, a graphic sketch and account and delineation of some phases of the companies' operation. It wasn't prepared for any judicial purpose. It isn't in nature, style or contents or phraseology suitable for such a purpose. It is stated in behalf of the government, truly, that there is nothing in this

454 which impeaches or varies anything which has been so comprehensively stipulated. I submit that in view of that statement that this comprehensive stipulation of 67 pages, which has been so cooperatively developed between the Government and the companies, would not be usefully or properly supplemented by this book of photographs and what we may call colloquial text. In any event I object to it earnestly as wholly incompetent, no foundation whatever laid for the receipt of this document in a quasi judicial proceeding. We think it would
455 be highly improper to admit it as well as serving no useful purpose.

Trail Examiner Gates: It will be admitted.

Judge Ransom: Exception.

(Document referred to marked Board's Exhibit No. 3, was received in evidence.)

Mr. Moscovitz: Mr. Examiner, before concluding our

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offer on jurisdiction, I would ask Judge Ransom if he would admit that this document, "Serving New York", to which he objected, was gotten up and published by the
456 Consolidated Edison Company of New York and its affiliated companies, the same companies who are in this proceeding as respondents.

Judge Ransom: Your Honor, I think I have stated that. I think Mr. Moscovitz, if he wishes, may accept my statement, that this pamphlet was put together for the purpose which I have stated. It was done by the Consolidated Edison Company for the purposes of giving a graphic story to some foreign guests who were in this country upon the invitation of the Government of the United States and of private industry, and who, under the hospitality arranged, were being locally shown the public utility facilities of this city. It was regarded,

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and undoubtedly was, a suitable pamphlet for them. They were men, most of them, who were experienced in utility operation by Government and private industry in other lands. There was no thought of making it in a form or content or phrasing suitable for a method of proof in a legal proceeding.

Mr. Moscovitz: That is all we have to offer, Mr. Examiner.

Judge Ransom: The proof which has been offered embodies the case in behalf of the government on this one phase of the matter of jurisdiction.

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I wish to offer in evidence the judgment roll filed June 2nd, 1937, in a case entitled "Consolidated Edison Company of New York, Inc. et al, against Lamar Hardy, United States Attorneys and others", which was case equity number 81-377, in the United States District Court for the Southern District of New York. The copy of the judgment roll which I have here is a copy certified by Charles Wiser, Clerk of the United States District Court for the Southern District of New York.

Mr. Moscovitz: I object to this offer, Mr. Examiner, on the ground that the Securities and Exchange Commission was not a party to the proceeding, that the jurisdictional question involved in that case, that of interstate commerce, is not the same as the one that we have before us today, there being a different question of what is commerce under that statute from what is commerce under this statute. I also would point out that although an action was brought some two years ago, there was no judgment roll entrance until yesterday.

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Judge Ransom: No, the judgment roll was certified, I think, yesterday, but the final decree, at least, was made by Mr. Justice Caffey, on the 23rd day of October, 1935.

I may say as to—

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Trial Examiner Gates: Is that in support of paragraph 11 of the affidavit?

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Judge Ransom: That is in support of paragraph 11 of the affidavit. I may say that this action was one brought to determine the applicability as to the Consolidated Edison Company, the Brooklyn Edison Company, and the Westchester Lighting Company, and I think perhaps one or two others of the former companies which have since emerged,—the applicability to those companies of the Public Utility Holding Act of 1935, and if the Act in its terms was held to be applicable, whether the Act as so constituted was valid and constitutional.

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The Securities and Exchange Commission was made a party, its regional administrator in this region, was made a party. The regional administrator was served within the Southern District of New York. A United States Marshal served with process the Securities and Exchange Commission in Washington, although the latter service by no possibility could have legal sufficiency. The Securities and Exchange Commission, by Mr. Cohen, Mr. Offen and Judge Burns, appeared in the case specially and moved to dismiss as to the Securities and Exchange Commission on the ground that there was not legal service upon it. The respondents took essentially the position that they had named the Securities and Exchange Commission as parties defendant because they desired, irrespective of technicalities of service, to give the Commission an opportunity to take part in the litiga-

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tion. The motion to quash was granted as to those defendants and the action was continued and went to final decree as regards the District Attorneys who, under the

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Statutes are charged with the duties of enforcing the Act, and also against the postmasters in New York, Brooklyn and the Bronx, who, under the Statutes, are charged with certain duties as to exclusion from the mails. The government continued the case but the Commission was taken out of it by its own motion. Of course, I take it that in this present case there are two different questions urged in behalf of the government. One would be a question whether the respondents are engaged in interstate commerce as the complaint here alleges. The other would be a question of whether even though 464
the respondents were not engaged in interstate commerce, the fact that some or many of their consumers were engaged in interstate commerce, would have repercussions and effects which would bring within the purview of the Act an employer who was not himself engaged in interstate commerce.

Clearly upon the question of whether the respondents are engaged in interstate commerce, this judgment roll is on its face applicable; as to its further implications,—those may be a matter for argument.

Mr. Moscovitz: On that point, Mr. Examiner, I again enter my objection. You have here a decree *pro confesso*. You have here a situation where there was no legal 465

service. You have here a situation where, as I understand it, you will find no determination. You have also a situation where there is to be an interpretation of what is interstate commerce under one Statute, which will be argued as a matter of determination as to application as to what is interstate commerce under our statute, and by virtue of the very nature of the Statute, the definitions of interstate commerce thereunder, the decisions of the Court in the Jones and Laughlin Case as applied

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to labor disputes arising under this Act. It seems to us that the offer should not be admitted.

Judge Ransom: I am sure that Mr. Moscovitz did not mean to leave the impression that legal service was not made upon proper defendants in this case. In the Consolidated Edison Case against Hardy et al, legal service was incontestibly made upon the local enforcement officers in the Eastern and Southern Districts of New York and upon the United States Marshal who had certain duties under the Act and upon the post-masters
467 in three post offices, who were charged with certain duties under the Act. The case proceeded and various motions were made by the government in behalf of those defendants after the Commission itself had been eliminated from the case upon its own motion.

I submit that the matters to which Mr. Moscovitz refers are for argument and do not go to the question of admissibility. As I say, the government practically

stipulated to a decree *pro confesso*. A decree *pro confesso*, or a consent to a decree *pro confesso*, has the
468 effect, of course, of taking the facts only well pleaded and not the legal conclusions. The decree of Mr. Justice Caffey enjoined those who were charged by law with instituting prosecutions, for pressing them against the respondents, because the Statute was not itself applicable to them, even though, as is true here, of the case at bar, the language was not broad enough to draw distinctions between companies which are local and not interstate and those which are engaged in interstate operations.

The injunction was granted against the post-masters and against, I think, one of the marshals, the other marshal having meanwhile ceased to be such officer, and no substitution having been made.

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Mr. Boudin: If your Honor please, on this question of decree, I want to join in the opposition to its being admitted, although I would not like to put the matter on the technical question of its admissibility in evidence but rather as to its weight if put in evidence. The objection to its being put in evidence is really that it is not material to the issues in this case. To begin wi[illegible] doubt very much whether one governmental agency can stipulate away the rights of another governmental agency representing the public for an entirely different

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purpose. It is true, of course, that a judgment *pro confesso,* as Judge Ransom very correctly said, is a judgment like any other, but is only limited to the particular matter with which it deals. I think anyone will admit that we could not here in this proceeding enter into a stipulation even though reduced to Judgment which would affect another agency in a matter covered by an entirely different law, set up for an entirely different purpose. It would be rather odd if the Securities and Exchange Commission could stipulate away the rights of the National Labor Relations Board which in

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this case represents certain individuals of the public who can only bring their complaints before a Court through the medium of a National Labor Relations Board. Concededly, the complainants in this case were not parties to the action in which the judgment was entered, and while nominally the National Labor Relations Board appears as complainant, we cannot overlook the reality that there are entirely different people involved in this matter and that it would be a construction which Judge Ransom tries to put upon the action of counsel for the Securities and Exchange Commission,—would be of stipulating away rights of the public with

which they were not concerned and over which they were not set up as guardians. But, in addition to that, it seems to me that even if the case had actually been tried and everybody served, the proper parties brought in in

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that case, it would still be immaterial in this case, not only because of the different wording of the Statute, and I am informed here, subject to checking up, that there are certain specific exemptions in the Securities
473 and Exchange Act which deal specifically with this class of corporations, to exclude them from its operations of that Act, assuming that the question were one of interstate commerce, and assuming that there were an actual binding decision that they were not engaged in interstate commerce, the judgment in the case would still not be material in this case, because I claim that the question in this case is not whether they are engaged in interstate commerce but whether interstate commerce is affected by the activities, and particularly by the possible cessation of activities, which is really the matter involved in all of these disputes.

474 Judge Ransom: I think I should perhaps, in fairness to all concerned, state what the proceedual status was with respect to the final order of a decree *pro confesso* and the subsequent entering of that decree. There was a stipulation that defendants Lamar Hardy and Leo J. Hickey, the two United States attorneys, do not oppose the entry of an order of a decree *pro confesso* against them, in the order annexed. Then later the situation, as to certain other defendants, was disposed of by virtue of the motion. The final decree was made after motions by the defendant Hardy and Hickey to dismiss the bill

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of complaint had been denied and final decree was

entered against them. There was no contest on the part of the very able representatives of the government of the facts that the plaintiff companies in that act, who are the respondents here, were not engaged in interstate commerce in the year 1935. 475

Mr. Moscovitz: Mr. Examiner, I—

Trial Examiner Gates: Did this apply to a corporate setup which would involve the actual transmission in interstate commerce, transmission across state lines?

Judge Ransom: No, the question involved was broadly in that case whether any of the corporate plaintiffs in that action were engaged in interstate commerce, and I might, in order to complete my offer at this time, offer also a similarly certified copy of the opinion of Judge Caffey in entering the judgment to which this judgment roll relates. 476

Mr. Moscovitz: I have the same objection to that, Mr. Examiner.

Judge Ransom: I offer both. This was the opinion filed June 31st, 1936, in United States District Court for the Southern District of New York. Judge Caffey accurately said, in his opinion, "A decree *pro confesso* admits only well pleaded facts (*Thomson* versus *Wooster, supra*). Confining consideration to those, the concession by the five defendants is not of the conclusions alleged in the bill or of the plaintiffs' claim of right either to 477

an injunction or to a declaratory judgment. The concession is merely that the corporate plaintiffs are engaged exclusively in intra-State business and do nothing which directly burdens or affects interstate or foreign commerce."

Mr. Moscovitz: Of course, we are having an argument at this time, Mr. Examiner, on the law of the case which I do not think is—

Judge Ransom: I agree with you, sir. I am sorry if I offended.

Mr. Moscovitz: It is not an offense at all, except that I simply wanted to point that out.

Trial Examiner Gates: Both offers are admitted.

Mr. Moscovitz: Exception.

(Documents referred to received in evidence marked Respondent's Exhibits No. 1 and No. 2 respectively.)

Judge Ransom: That, sir, is the only evidence on behalf of the respondents on the question of jurisdiction. I am able now to read into the record the telegram to which I previously referred: "Re Consolidated Edison Case. Board has denied request for hearing upon motion to dismiss the complaint and will hold in abeyance determination of motion until after full hearing on complaint has been held. Formal order follows. Signed, National Labor Relations Board, Benedict Wolfe". I think your Honor may or may not be aware that under

an understanding which I think correctly state between representatives of the Board and myself, today's hearing was to be for the taking of the testimony upon the jurisdictional phase of the case. That is now completed. Under the ruling of the Board, I take it, to which we have excepted, the consideration of determination of the motion to dismiss is held in abeyance until there has been completed before your Honor the hearing upon the merits, and if you are ready we shall be glad to; at least I shall be, and I think Mr. Moscovitz will be, to discuss with you the question on which we can go ahead on the merits of the case.

(Discussion off the record.)

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Trial Examiner Gates: Is there anything further today?

Mr. Moscovitz: No, there is not.

Mr. Ransom: Nothing further for the respondents.

Trial Examiner Gates: We will recess until 2:00 P. M., Thursday, June 10th.

ADJOURNMENT

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Minutes of Hearing, Held June 10, 1937

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER of 485 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated companies, BROOKLYN EDISON COMPANY, INC., NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY, *Respondents,* and 486 UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.	Case No. II-C 224

14 Vesey Street,
New York City, N. Y.,
June 10, 1937.

The above entitled matter came on for hearing pursuant to adjournment taken June 3, 1937, at 2:00 P. M.

Before:

ROBERT M. GATES, Trial Examiner.

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National

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Labor Relations Board.

WILL MASLOW, Esq., Attorney for the National Labor Relations Board.

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, New York, appearing for United Electrical and Radio Workers Local 1212.

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City, New York (By William L. Ransom and Pincus M. Berkson), appearing for the respondent companies.

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Trial Examiner Gates: Whenever you are ready, gentlemen.

Mr. Moscovitz: Are there going to be further arguments on the motions to intervene, Mr. Examiner?

Trial Examiner Gates: If any petitioner feels that he has not fully stated his case he may be heard further. It is pretty well covered, however.

Mr. Fink: I think we submitted everything we possibly could in the last hearing. I think the words speak for themselves.

Trial Examiner Gates: Does the government wish to be heard any further?

Mr. Moscovitz: No, I have nothing further to add to the position which I took at the last hearing date.

Trial Examiner Gates: The petition of the Independent Union presented by Mr. Redfield is denied.

490 The petition of the Independent Gas and Electric Workers Union of Westchester County, presented by Mr. Fink, is also denied.

Mr. Moscovitz: I would like to introduce into the record a copy of an order received from the Board denying the respondent's petition or motion to dismiss the complaint before hearing is held on the complaint.

Judge Ransom: There is no objection on behalf of the respondents to receiving the order as a part of the record.

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Trial Examiner Gates: It will be admitted—

Judge Ransom: For the purposes of the record, I am not sure and I do not know what exactly the proper procedure may be, but I would like, in any event to note upon the record the respectful exception of the respondents jointly and severally to the order of June 2, 1937, made by the Board and to the refusal of the Board to grant the motion and the request made on behalf of the respondents under date of May 17th.

Mr. Moscovitz: I would like to bring to your attention at this time, Mr. Examiner, that yesterday, in the afternoon, I served Judge Ransom with a copy of a motion to amend the complaint which is before you today. The motion to amend goes to paragraph 19 of the original complaint by adding thereto, as one of the discharged persons named in that paragraph, the name of Stephen L. Solosy. This amendment makes it necessary, Mr. Examiner, to also amend paragraph 20 of the original complaint as well as paragraph 21 of the original complaint by adding thereto in the respective paragraphs the name of Stephen L. Solosy.

I will introduce at this time, if I may, the copy of the notice of motion to amend, which spells out more

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particularly the language of the complaint as amended.

Judge Ransom: Reserving our objections to the complaint, the jurisdiction, and the proceedings, we have no

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objection to the allowance of the amendment.

Trial Examiner Gates: Motion granted.

Judge Ransom: I take it that for the purposes of the record that the motions which I made at the last hearing, which were addressed to the complaint as it then stood, may be considered as addressed to the complaint as now 494
amended, and I assume that they would come within the purview of the action of the Board in reserving the consideration of that motion until this hearing has been completed.

Trial Examiner Gates: That is correct.

Mr. Moscovitz: Mr. Examiner, I think it should also be pointed out that there has not yet been filed in this proceeding by Judge Ransom, as counsel for the respondents, an answer. We are not raising any technical objection to the failure of counsel to file the answer so far, except that I would be interested at this point to learn whether or not Judge Ransom contemplates filing an 495
answer to the complaint so that I may conduct myself accordingly.

Judge Ransom: Well, sir, I am glad to state that for the record. I take it that under the rules of the Board and probably also under applicable principles of law, the respondents would have a right to answer here without prejudice and need not absent themselves from the proceeding or refuse to co-operate in bringing before

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this Board pertinent facts, tribunal having jurisdiction over this complaint.

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Therefore, it has been, and is the intention of the respondents here, without waiving their fundamental objection, to answer and to take part. I had expected to have an answer on behalf of respondents available to serve before this hearing today. As your Honor knows I was away on Tuesday afternoon and yesterday and in my absence the complaint was amended. Under those circumstances, returning to the city this morning, I was not able to make the necessary revisions but if it is agreeable to your Honor and to Mr. Moscovitz, the
497 answer will be served at least within the week.

(Documents referred to received in evidence marked Board's Exhibits No. 4 and No. 5 respectively.)

Mr. Moscovitz: I have no objection to that plan, Mr. Examiner.

Trial Examiner Gates: I merely note for the record that under the rules and regulations an answer will be filed within ten days.

Mr. Ransom: I take it, sir, that that would extend from and begin at the time at which this amendment was filed; namely, on yesterday, and therefore the period
498 provided in the rules for the presentation of answer would be, in fact, ten days from that time.

However, we do not intend to avail ourselves of that. We do not make any technical objection to it, that this

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hearing is proceeding in advance of the filing of an answer before the expiration of the period provided for in the rules, as I understand it, for the filing of an answer.

Mr. Moscovitz: Do you want to hear me on that?

Trial Examiner Gates: No.

Mr. Moscovitz: We are ready to proceed.

I would like first to inquire—well, there is no necessity for inquiring, I see the person has not responded to the subpoena that was served upon him yesterday, as yet. Therefore, I will wait to call the contemplated witness until tomorrow. At this time I will call Mr. Harold Straub.

HAROLD STRAUB, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows: 500

Direct Examination:

Q. (By Mr. Moscovitz) Please state your full name? A. Harold Straub.

Q. Your address? A. 2440 Maclay Avenue, Bronx.

Q. By whom are you employed at the present time? A. Consolidated Edison Company of New York.

Q. Have you responded today to the service of a subpoena by the National Labor Relations Board? A. I have.

Q. In what capacity are you employed by the Con- 501

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solidated Electric Company? A. My payroll title is that of first grade lineman while I am actually working as a cable splicer.

Judge Ransom: I am having difficulty in hearing you. Would you keep your voice up?

The Witness: Yes, sir.

Q. (By Mr. Moscovitz) And when you say your actual classification is first grade lineman, but that you are now employed as a cable splicer, will you explain what you mean by that statement? A. Well, the actual

502 *Harold Straub—For N.L.R.B.—Direct*

work that I am doing is that of a cable splicer. Several years ago I went to a cable splicing school and did work in cable splicing although my payroll classification was never changed. After having worked as a cable splicer I went back to doing line work and since that time I have been transferred to Manhattan as a cable splicer, doing the work that I theretofore did as a cable splicer. I am now doing cable splicing in Manhattan.

Q. When did that happen? I mean by that, your transfer back to Manhattan as a cable splicer? A.
503 Approximately three weeks ago.

Q. How long did you engage in or how long had you been before that, employed as a first grade lineman? A. For a period of seven years.

Q. Has there been a change in your rate of pay since

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you were transferred to the new work? A. No, there has not.

Q. Has there been any change of the hourly scale? A. No, there has not.

Q. No change in the hourly scale; is that right? A.
504 That is true.

Q. As a cable splicer, will you—would you say that a cable splicer job is a job ranking below that of a first grade lineman?

Judge Ransom: Objected to as incompetent, immaterial and irrelevant and not within any issues in this complaint. This gentleman is not one of the alleged discharged employees, under any amendment as so far served upon us.

Trial Examiner Gates: You may answer.

The Witness: I may answer?

Trial Examiner Gates: Yes.

505

The Witness: The jobs are about equal. There is no actual difference between cable splicer and lineman because a cable splicer and lineman are practically the same thing in pay and so forth.

Q. (By Mr. Moscovitz) How long have you worked for the Consolidated Edison Company, all told? A. For a period of a little better than ten years.

Q. What is your weekly pay at this time? A. $43.20.

S. M. 45

506

Q. Did you, at the time that you went into the employ of the company, become a member of any labor organization. A. Not at that particular time. There was no labor organization in existence among the employees of the Consolidated Edison Company ten years ago.

Q. Were you at that time—

Judge Ransom: (interposing) Just a moment please. I think, perhaps, you would wish to get the record correct. I would like to have the facts. The witness speaks about entering the employ of the Consolidated Edison Company ten years ago. Would it not be well to find out what company he did work for?

507

Mr. Moscovitz: Yes, indeed.

Q. (By Mr. Moscovitz) What company were you employed by at that time? A. The company formerly known as the Bronx Gas and Electric Company.

Q. The Bronx Gas and Electric Company? A. Yes.

Q. How long, then, where you in the employ, how long were you in the employ of that company? A. From March, 1927, until December 23, 1936, at which time the Bronx Gas and Electric Company was merged into the Consolidated Edison Company of New York.

508 *Harold Straub—For N.L.R.B.—Direct*

Q. At the time you went to work for the company in

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1927, were you a member of any labor organization? A. No, I was not.

Q. And you say that at that time there was no labor organization in existence in the company? A. No, sir, there was not.

Q. Now, did you at any time after your original employment become a member of any labor organiza-
509 tion?

Judge Ransom: Objected to as not within any issues here.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. I became affiliated with the employee representation plan in the Bronx Gas & Electric Company.

Q. (By Mr. Moscovitz) When was that? A. I believe that Plan was started some time in 1934.

Q. Until that time you had belonged to no labor organization? A. No, sir, I had not.

Q. Were you a member of this Employee Representa-
510 tion Plan or were you an officer? A. The first year I was only a member of the Employee Representation Plan; the first year of the Employee's Plan's existence.

Q. Was that plan only in existence in the company in which you were employed or was that plan in exist-

S. M. 47

ence throughout the Consolidated Edison System? A. The particular plan which we belonged to was in existence in the Bronx Gas and Electric Company but there were, I understand, thirteen similar plans, a plan covering each company in the Consolidated Edison.

Judge Ransom: I move to strike out the witness' answer as purely hearsay and having no probative value here. There is no complaint here involving the Employee Representation Plan.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Were you one of the charter members of this Employee Representation Plan? A. As I can understand, or as I can remember, there was no such thing as a charter member. There were certain definite people used—perhaps "used" is the wrong word; there were certain definite people, with the cooperation of the management, who started out the Employee Representation Plan in the different companies. 512

Judge Ransom: I move to strike out the answer as not responsive and highly incompetent. There is no issue as presented here of any complaint of that nature; there is no complaint made of that.

Trial Examiner Gates: The question has not been completely answered.

Q. (By Mr. Moscovitz) As I understand the answer, 513

you were not a charter member, is that it? A. That is true.

Q. And you—

Judge Ransom: I object to this whole line of examination because the proof shows there is no evidence that there was any charter member or anything like a charter member. You might as well talk about a charter member of the City of New York as a voter.

Trial Examiner Gates: It may stand.
Judge Ransom: Exception.

S. M. 49

Q. (By Mr. Moscovitz) Did you have anything at all to do with the organization of this employee representation plan? A. Yes, I did.

Q. Tell us what your organizational association was with this plan. A. That involved quite a detailed explanation. I cannot remember the exact dates, but I
515 distinctly recall coming to work one morning in the Bronx Gas & Electric Company and being called by a supervisor, the man that I worked for.

Q. What is his name? A. Mr. Fitzsimmons. He is since dead. I remember being told to go home and change my clothes and report back to him. I think it was nine or ten o'clock; I had not the slightest idea what it was about. I did as I was told and I met him and came back and reported to him at ten o'clock and he told me that I was to accompany him and another man by the name of Mr. Duncellen, and another man by the name of Newport up to the office of the Westchester Lighting
516 Company.

Q. Were those men both employees of the same company? A. They were.

Q. Were they supervisory employees, or regular employees? A. No, regular employees. Went up to Westchester Lighting Company and met a Mr. Wilder, the vice-president, Stewart Wilder, vice-president of the

S. M. 50

Westchester Lighting Company, the Yonkers Electric Light & Power, and the Bronx Gas & Electric Company.

Q. Was he vice-president of all those companies? A. That's right.

Q. Yes. A. We spoke to Mr. Wilder for a few minutes and we were brought into the office of a Mr. Rosenquest, president of the same three companies. We were introduced to Mr. Rosenquest and we talked to him a few minutes and he said he understood we had been sent up there by the employees to start a means of collective bargaining between management of the company and employees of the company.

Personally, it was the first I had heard of the thing. I thought it was a good plan the way it was outlined at that time. We got forms that were furnished us by the 518
management of the company.

Q. When you say the management of the company, do you mean by this same president and vice-president? A. That's right.

Q. Yes. A. And these forms had a statement on it requesting that a vote be held to set up a means of collective bargaining between the employees of the Bronx Gas & Electric Company and the management of that company, and I was one of the three fellows that went

around with these forms and got various employees in 519
my particular department to sign them.

Q. Who told you to do that? A. It was understood by the management of the company that we were supposed to do that—

Judge Ransom: I move to strike out the answer—not what he understood—the question was, wasn't it? The witness gives just a general conclusion.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. I was furnished with the use of a company car.

520 *Harold Straub—For N.L.R.B.—Direct*

Q. (By Mr. Moscovitz) By whom? A. By the transport man in charge of transportation for the Bronx Gas & Electric Company, at the request of the foreman in my department, that this transportation be given me in order to contact the various employees in my department and have them sign this petition.

Q. Yes. How much time did you spend in this activity at that time? A. About two days.

Q. Yes. And did you distribute the cards to which you have referred? A. There weren't any cards to be
521 distributed. It was a form. They were clipped together. It was one mimeographed page and all the rest of them just had lines on them and the fellows read it and talked it over and finally signed all of it—

S. M. 52

Q. And did the signing indicate immediate membership in the new organization? A. No.

Q. What did it indicate? A. It indicated that they were desirous of having a poll taken amongst the employees of the company, with the view of setting up a means of collective bargaining between the management
522 of the company and the employees of the company.

Q. Was such a vote taken? A. It was.

Q. Do you recall when that was? A. I can't recall the exact date. I do believe it was in March.

Q. What year? A. 1935—I am not positive.

Q. Was a vote taken in all the other companies at the same time to a plan, do you know? A. Not at the same time.

Judge Ransom: Objected to as incompetent. The witness has not shown any qualification to answer. Besides, it is outside of the issues.

Trial Examiner Gates: He may answer, if he knows.

A. There was a vote taken in the other companies, but not at the same time.

S. M. 53

Q. (By Mr. Moscovitz) When you say the other companies, what companies do you refer to? A. The New York Edison, Consolidated, Brooklyn, Westchester, New York & Queens, and Yonkers, and the New York Steam and the Consolidated Electric & Subway Company.

Q. Were they all subsequent to the election in your own company? A. Some were before our own particular 524
election and others were held after that.

Q. What was the result of the vote in your company? A. The employee representation plan was put into effect at that company.

Q. By whom was it put into effect?

Judge Ransom: Objected to as incompetent, calling for a conclusion. Let him state if the employees voted for it or voted against it. That is evidence.

Trial Examiner Gates: He may answer.

A. Would you repeat the question? 525

(Question read.)

A. The vote was taken. The employees themselves voted on the plan and I do not definitely say just who put the plan into effect. All the literature, a copy of the plan itself, was given to the employees by the management of the company. It was paid for by the management of the company. They wrote it up. They furnished us with a

S. M. 54

constitution for it.

Q. And after the vote, when it was established that

526 *Harold Straub—For N.L.R.B.—Direct*

the employee representation plan was to be the bargaining agency for the men, was there an election of officers? A. There was an election of both representatives and officers.

Q. Yes. And were you elected as either a representative or officer? A. Not at that time.

Q. Were you elected as either a representative or officer at any time? A. The following year.

Q. What year was that? A. 1935, March of 1935.

Q. To what were you elected? A. I was elected as
527 the representative of the general council, Bronx Gas & Electric Company, for the employees of the overhead construction department.

Q. What is the duty, or what are the duties of a representative? A. We were supposed to represent the employees.

Q. And how many employees did a representative represent? A. In the constitution of the employee representation plan that I was in, there was one representative allowed for each 50 employees in any one department, or a fraction thereof.

S. M. 55

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Q. And how many representatives were there in your plant or company? A. There were approximately 15 or 16. I can't exactly remember. There were about 480-some-odd employees in the company, and there was one representative for each 50.

Q. With whom did you deal in your representative capacity? A. The committee appointed by the management of the companies that I have mentioned, the Westchester, Yonkers, and Bronx Companies.

Q. Do you recall who they were? A. I never met this committee as a whole. I understood that Mr. Rosenquest at that time, Mr. Wilder, and some other gentle-

men whose names I cannot recall, and a Mr. A. L. Carroll was appointed secretary of the management committee. He was the man with whom we dealt directly.

Q. Was this management committee a commitee composed of representatives of each of the companies which you have already listed? A. Do you mean the employees?

Q. No, the employer management committee? A. Well, the management of the company of these three companies were set up to cover the three companies. I understand that the same management committee dealt with the problems of the Westchester Company and of 530
the Yonkers Electric Light & Power Company. I know

S. M. 56

definitely that they dealt with the same secretary of the management committee.

Q. Was there ever a change in that system of negotiation? A. After we were merged, after the Bronx Gas & Electric was merged into the Consolidated Edison of New York.

Q. When was that? A. December 23, 1936, we established for the employees of the Bronx Gas & Electric Company a contact with Col. Stillwell, vice-president of 531
the Consolidated Edison Company, I believe in charge of the employees personnel and so forth.

Q. And was he the person with whom you negotiated from that time on? A. He was.

Q. How much of your time did you generally spend in this kind of work? A. The greatest portion of it.

Q. The greatest portion of your working time? A. That's right.

Q. By whom were you paid for the time that you spend doing this work? A. I received my weekly pay envelope the same as if I had been out on of a job.

Q. And does the same go for the other representatives? A. Yes.

S. M. 57

Q. And for the council members? A. Those of them that were required to spend any time in representing the employees, were making contacts either among the employees themselves or talking to the various department heads or supervisors over the management of the company themselves, they were always paid for the time they spent.

Q. Can you tell us simply how the plan would work, or how it was set up as a matter of technical action—

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Judge Ransom: Objected to as in no way the best evidence. The plan would speak for itself. No foundation laid.

Trial Examiner Gates: You may answer the question.

Judge Ransom: Exception.

A. The plan of the Bronx Gas & Electric Company differed from the plans in practice in the other companies, inasmuch as we were not a large enough company to p[ut] it into effect, to put into effect the various councils that were outlined in the constitution of the Bronx Gas & 534 Electric Company plan, but in the other companies they were doing work according to their own constitution, and I believe the set-up was to elect a certain number of employees from each department and form what is known as a Bureau Council.

These Bureau Council men in turn elected a chairman, a chairman of comparable bureaus all over the system, in turn met and formed what is known as a department council. These department councils in turn

S. M. 58

elected a chairman who then became a member of the general council that was the original set-up of our plan, and of the New York Edison Company plan.

535

Q. What were the duties of the members of the general council? A. The duties of the members of the general council were to represent the employees, to take up their various grievances to the management, etc.

Q. Now, before, when you stated that you received your check from the company, despite the fact that you were doing representation work, did you, in addition to that payment by the company, receive any miscellaneous expense payments? A. At any time that I incurred any additional expense I was paid for them by the company, yes.

536

Q. Was there any working arrangement between yourself, or, rather, between yourself as a representative and the other representatives in your company, with the company, for payment of moneys expended by you in your employee representation work?

Judge Ransom: Just a moment. I do not want to keep renewing objections, but I do want the record to show, if it may, that I have an objection to this general line, that it is not within any issue tendered by the complaint; not within any issue of which the respondents have notice or have reason to express within the scope of this hearing. This complaint makes certain rather definite

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charges. None of those charges remotely or indirectly, even relate to the testimony that this witness has given thus far.

Trial Examiner Gates: May it be understood that your objection goes to the whole line?

Judge Ransom: Yes, and I respectfully except to your Honor's ruling in all those respects.

Mr. Moscovitz: Now, will you read back my rather long question?

538 *Harold Straub—For N.L.R.B.—Direct*

(Question read.)

A. There was no arrangement worked out between myself and other general council chairmen in conjunction with the management of the company. Any arrangements that there were between myself and between the management of the company was an individual arrangement, although it did apply to the other chairmen.

Q. Yes, now, what was the individual arrangement which you worked out which applied also to the other chairmen?

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Judge Ransom: Object to it with relation to other chairmen. He said the arrangement was purely individual.

Trial Examiner Gates: Objection sustained.

Q. (By Mr. Moscovitz) What was the arrangement that you worked out as a member of the council with the company? A. I didn't work out the arrangement. I inherited it.

Q. Now, explain how you inherited the arrangement. A. The previous chairman, the chairman of the previous

540 S. M. 60

council, evidently worked out the arrangement.

Q. What was his name? A. There were two of them prior to myself, Mr. Brennan, and Mr. Ray Corcoran.

Q. What was the arrangement that was there that you inherited? A. When I took over the office of chairman of the general council I was told by Mr. Corcoran that there was a definite expense account allowed for the chairman of the council in any expense that might be incurred, that at any time I incurred any expense I was to submit it under a heading and it would be approved and it would be paid, and it was.

Q. To whom did you submit this for approval? A.

Mr. P. B. Elliott, my department head. Mr. Elliott would sign the voucher and I would bring it down to the cashier and present it to him and he would pay it.

Q. No question ever raised about the amount of your expenditures? A. None whatever.

Q. What amount would they run? A. I attempted to be honest about it and never charged the management of the company more than I actually spent, so mine never run very high.

Q. Do you know of—

Judge Ransom: I move to strike out "very high." Let him state something definite.

S. M. 61

Q. (By Mr. Moscovitz) State, if you recall, the amounts. A. The highest amount I believe I ever passed was one for about $2.50, but there was no definite limit on it. No one ever told me there was a certain set amount I should get.

Q. How often would you submit accounts like that? A. As often as I incurred any expense. Sometimes two or three times a week, and sometimes once a week, or once a month.

Q. What were the items you would spend this money on? A. Carfare, lunch money, attending various meetings with other council chairmen in different parts of the system, and any incidentals.

Q. Now, would you come and go in this work as you pleased? A. Absolutely.

Q. You have explained already, have you not, that each employee of the representation plan was in the company, and had his own general council, is that right? A. That is right. That was the primary set-up.

Q. And each general council, in turn, had its chairman? A. That is right.

544 *Harold Straub—For N.L.R.B.—Direct*

Q. Do you recall who the most active chairman of the general councils were in the respective companies?

Judge Ransom: Objected to as immaterial and not within the issues here.

Trial Examiner Gates: Overruled.

S. M. 62

Q. (By Mr. Moscovitz) Take your first, if you can, the Yonkers Electric Light & Power Company. A. There was a general chairman, as I recall it, and there
545 was a chairman of each one of them. In that case there was a gentleman, I knew him, of that group; the newly-elected chairman for the year 1937 was a man by the name of Drury, and the previous chairman was a man by the name of Mr. McGowan.

Q. With regard to the Westchester Lighting Company? A. Mr. Quain was the chairman.

Q. With regard to the Consolidated Gas Company, who was the chairman? A. Mr. George Parker.

Q. The Edison Company of New York—New York Edison Company? A. Mr. Charles—I beg your pardon, Mr. William B. Genley.

Q. Of the Brooklyn Edison Company? A. Mr.
546 Clausen, or Mr. Clausson.

Q. Was it C-l-a-u-s-e-n? A. I could not say as to that.

Q. New York & Queens Lighting & Power Company? A. Patrick Kerry.

Q. And you were for the Bronx Gas & Electric Company. A. That is right.

Q. Were there any others? A. There were others,

S. M. 63

but I do not recall the names. There was the chairman of the New York Steam; there was the chairman of the Consolidated Telegraph & Electric Subway Company. That is about all.

Q. You do not, at this point, recall their names? A. No, I do not.

Q. Do you recall who, among the men that you have listed, were considered by the chairman as the most active men in this work?

Judge Ransom: Objected to as immaterial and not a proper method of proof.

Trial Examiner Gates: Read the question.

(Question read.)

Mr. Moscovitz: I withdraw the question. 548

Q. (By Mr. Moscovitz) As the chairman of the council, did you meet with other chairmen, from time to time, in the general council? A. Oh, yes. We met with one another quite frequently.

Q. Did you meet as a body, as one body? A. Yes.

Q. Did you take up questions peculiar to your repective companies? A. We did, among ourselves, but we never succeeded in getting them to the management of the company as a request from the 40,000 employees of the entire system.

Q. Of the men who sat as chairmen in this general meeting, from time to time, were there any who might 549 have met and did meet more frequently or more often with their managers than the rest of you? A. I am sorry, I do not understand the question.

Q. Of the men who sat as chairmen in these general

meetings from time to time, were there any who might have met and did meet more often with managers, I mean with the management itself, than the rest of you? A. Oh, yes. There were of this group of the chairmen the men who met more often with the management than the rest of us did.

550 Q. Who were they? A. Mr. George Parker of the Consolidated Gas Company and Mr. William B. Ganley of the New York Edison Company.

Q. Were they considered by you as the most active chairmen of the group?

Judge Ransom: Objected to as incompetent. How can you testify what others did. The question is indefinite, anyway.

Trial Examiner Gates: Sustained.

551 Q. (By Mr. Moscovitz) As I recall your testimony, you stated that the various general councils were held, from time to time, with Mr. F. L. Carlisle, the chairman of the board of directors of the Consolidated Edison Company; is that right? A. That is right.

S. M. 65

Q. Will you give us, again, the date when those conferences took place; or, rather, when the practice started? A. What was that?

Q. Will you give us, again, the date when this practice started? A. Oh, it had probably started before I
552 came into the picture as a general council chairman, but I can give you the dates of the meetings that I attended, rather, in a general way, not the particular dates.

Q. Do you recall the first date? A. I do.

Q. When? A. July of 1936 all of the general council chairmen met in conjunction with Mr. Carlisle, the chairman of the board of directors, and the various members of the different managements of the several companies.

Q. Do you recall their names? A. Well, I do. At that time there was a Mr. Smith, president of the Consolidated—of the New York Edison Company, Mr. Robert B. Grove, Vice-president of the New York Edison Company, Col. John Stillwell, Vice-president, Consoli-

dated Gas Company, Mr. Edward P. Prezzano, president of the Westchester Lighting Company, and several other gentlemen whose names I do not now recall.

S. M. 66

Q. You say that this meeting was in July, 1936? A. Yes.

Q. Where was the first meeting that you attended; was that the first meeting you attended? A. Yes, sir.

Q. Were the other chairmen in attendance? A. Yes.

Q. Were those chairmen the ones that you have 554
already listed? A. That is right. With one or two exceptions. Mr. Drury was not at this time the chairman of the Yonkers Company, Mr. McGowan was the chairman of that company. I believe that is the only difference.

Q. Did you at this meeting take up regular employee representation plan business? A. Those meetings were called primarily to have Mr. Carlisle explain that some definite point or some definite decision the management had made that would affect all of the employees in all of the various companies of the Edison system.

Q. Give us an example. A. For example, the first 555
meeting was called to notify the employees, that was, as I recall it, a meeting that was to notify the employees at some time in August, 1936, the restoration of the four and one-sixth per cent. pay cut would be made to the employees; that was the prime reason for that meeting

S. M. 67

was held.

Q. Would you just then take this information back to your members? A. We would.

Q. Do you recall when it was that you next met with Mr. Carlisle? A. I do not know if it was exactly on the

day of December 23rd, but it was within that week, it was either the 22nd or the 23rd of December, 1936.

Q. Were the same chairmen there? A. Yes.

Q. The same officers of the company that you have already listed? A. I believe that in conjunction with Mr. Smith, president of the New York Edison Company, that Mr. Tapscott also attended that meeting.

Q. Was this meeting similar to the preceding one? A. Yes, with the difference that there was a different topic discussed.

557 Q. And the topic, just as an example, was what? A. Why, there had been quite a bit of agitation or quite a bit of rumor being spread through the system, and I mean, "through the system," I mean the Edison system, to the effect that the management were considering paying a bonus, a Christmas bonus at that particular time.

S. M. 68

Mr. Carlisle, in opening the meeting, told us that the management did not consider paying the bonus then and went on to give us various reasons why. But, he stated among other things that one and one-half time would be
558 paid for overtime and that they were allotting a certain definite sum of money for the pension plan by employees. I have forgotten just how many millions of dollars, also, would be spent within the year of 1937 for plant extension.

Q. Do you recall when it was that you next met? A. Yes, indeed, I do.

Q. When was that? A. Tuesday, April 20, 1937.

Q. At what time? A. 11 o'clock a. m.

Q. When and where? A. At that time in the Board Room of the company building at No. 4 Irving Place, New York City, N. Y.

Q. Tuesday, April 20, 1937? A. Yes, sir.

Q. Was that the board room of the Consolidated Edison Company? A. I believe it is. It is located at 14—I beg your pardon—at No. 4 Irving Place.

Q. No. 4 Irving Place? A. Yes.

S. M. 69

Q. When you say "the board room," of course you mean the board of directors? A. Yes, sir.

Q. Of the company? A. Yes, sir.

Q. Who attended the meeting for the companies? A. The same officials of the companies that I have 560 formerly named before, with the exception that Mr. Fogg, Colonel Fogg, I believe, he is the Vice Chairman of the Board of Directors of the Consolidated Edison also attended the meeting.

Q. The same general council representatives? A. General council chairmen.

Q. General council chairmen? A. Same general council chairmen.

Q. Any changes in the list that you have already given us? A. With the exception, of course, that Mr. Drury then had been elected chairman of the Yonkers Light & Power Company in place of Mr. McGowan. 561

Q. Tell us what took place at that meeting. A. Mr. Carlisle opened the meeting by informing the employees of a surprise, the surprise that the electrical industry had received in the Wagner Act being upheld; the Wagner Act being held constitutional by the United States Supreme Court.

He went on to add that it was a surprise not only to

S. M. 70

the electrical industry but practically all industry. He said, "While we do not operate under the Wagner Act, there is pending in Albany legislation known as the

Doyle-Neustein Bill, the so-called Little Wagner Act," which will definitely bring us within the scope of the legislation.

He then read passages from this proposed Doyle-Neustein Bill and commented on it, saying how impossible it would be for the company to continue to support the company union—

Q. Was that remark in reference to the organizations that you men were then representing?

563 Judge Ransom: I object, I call your attention to the utter impossibility of answering the question, and as calling for a conclusion on the part of the witness.

Trial Examiner Gates: He may state what Mr. Carlisle said, if anything.

The Witness: Mr. Carlisle then added that he had received a communication from a Mr. Daniel Tracy, International president of the International Brotherhood of Electrical Workers—

Q. (By Mr. Moscovitz) You have not answered my question. I asked you whether or not the reference made by Mr. Carlisle to the support of company unions was 564 to the councils that you gentlemen were then representing?

S. M. 71

Judge Ransom: I object to the renewal of that question. It is quite improper. He said what Mr. Carlisle stated, and now this is an effort to make Mr. Carlisle's statement relate to something which it does not appear from what Mr. Carlisle said, it related.

Trial Examiner Gates: I have ruled on that.

Q. (By the Trial Examiner) Do you understand my ruling, Mr. Witness? A. No, sir, I do not. I do not

quite understand what you said, exactly. I understand the general question to be different from what the ruling was, I mean. The ruling said that I should go on and say what Mr. Carlisle said.

Q. If he said in respect of that anything, you may state what he said and if he did not, you do not have to answer. A. Very well.

Q. (By Mr. Moscovitz) Well, you have already testified that Mr. Carlisle made some statements to the effect that the company could not continue the support of the company unions. A. That is right. 566

Q. Did he make any statement as to whether or not he was referring to, specifically, the employee representation plans that you gentlemen were then representing in the various companies? A. It was the first time that

S. M. 72

I ever heard it called "company union," prior to that we called it employee representation plan and it could not be anything else because there was no other union in the field, so I felt there could not be anything else that he was applying his remarks to.

Q. You told, and I believe you said something about 567
Mr. Tracy? A. Yes.

Q. Proceed to what you were telling us about Mr. Tracy. A. Yes, sir. Mr. Carlisle went on to speak, after reading several passages of the Doyle-Neustein Bill, that he had received a communication from Daniel Tracy of the International Brotherhood of—rather, from Daniel Tracy, who was the International president of the International Brotherhood of Electrical Workers asking that that brotherhood be recognized as the sole bargaining body for the employees of the Consolidated Edison Company.

He said that he was answering this communication

and according them recognition, that recognition, and the International Brotherhood would receive it; in other words, that he was going to answer that communication and accord that recognition to the International Brotherhood of Electrical Workers.

Q. Did that finish his statement to you? A. Right at that particular time it did.

Q. At that point when Mr. Carlisle stated that he

S. M. 73

569 had agreed to accord the International Brotherhood of Electrical Workers this recognition, was there any statement made by any of the men regarding the question of whether or not any of the employees of the system belonged to the I.B.E.W.? A. Oh, very definitely. Yes, there were several questions by several different members of the group, by the various chairmen asking Mr. Carlisle these questions.

Q. Tell us about that. A. I believe they started out by Mr. Ganley, chairman of the New York Edison council. He objected very strenuously to Mr. Carlisle according Mr. Tracy that recognition. He said his council
570 had realized that there was a bill proposed and that there was a bill being considered in Albany that would eliminate them as a union or representation plan and that they had already set up a committee, legislative committee, they called it, and they were supposed to formulate plans and draw up a constitution, and so forth, to create an independent organization within the then existing employee representation plan or, rather, out of the then existing employee representation plan that would be contributed to and supported by the employees of the New York Edison Company.

He said if Mr. Carlisle would withhold granting recognition to Mr. Tracy, that he would say that he was sure that the employees of the Consolidated would be only too

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glad to contribute to the support of an organization of their own.

Q. Up to this point, had there been submitted to the employees of the system the question as to whether or not the employees were desirous of becoming affiliated with the International Brotherhood of Electrical Workers? A. Never.

Q. Had there been any statement made by any of the officers of the company to the employees on that question, do you know? A. None that I know of.

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Q. Had there been any such representation made to the men in so far as you know by representatives of the International Brotherhood of Electrical Workers?

Judge Ransom: I object. This is clearly outside of any issue that is tendered to the respondents in this complaint.

Trial Examiner Gates: You may answer.

Judge Ransom: **Exception.**

A. Not that I know of.

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Q. (By Mr. Moscovitz) Did you know of any other labor organization in the field at that time outside of your own organization? A. I knew of an organization that was attempting to unionize the Edison employees.

Q. What? A. The United Electrical and Radio, the C.I.O. affiliates.

Q. Do you know of any other? A. No, I do not.

Q. Will you tell us now whether or not any other protests or complaints were registered at this meeting by other general council members? A. Mr. Clausen, chairman of the Brooklyn General Council, got up and made a statement to the effect that there was a Voter's League, a political organization in existence among the employees

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of Brooklyn and if they were given an opportunity he knew that through this Voter's League that they, in turn, could form an organization that would represent the employees of the Brooklyn Edison and that they would be more than glad to support this union and contribute to it and so forth.

Q. How long before this meeting had you learned of the electrical field so far as labor was concerned, of affiliates of the C.I.O.? A. About three weeks before that
575 there was that information I gained through the newspapers and through the attempts on the part of different members of the C.I.O. to organize the employees of the Edison Company through the distribution of pamphlets and leaflets outside of the company buildings and making speeches and so forth.

Q. Between the time that you heard of the entry of the C.I.O. into the field and the time that this meeting was held, to which you now testify, you say that there had not been any submission of representation to the employees of the system? A. No, sir.

Q. Did Mr. Carlisle at this meeting, give you the sub-
576 stance of a letter of recognition which he sent to Mr. Tracy? A. He did not. He only told us that he was sending the recognition or granting to Mr. Tracy the right to bargain for the employees of the Consolidated Edison Company.

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Q. Did Mr. Carlisle ask you gentlemen whether or not the men you represented were desirous of becoming members of any other labor organization? A. No, sir, he did not.

Q. Did Mr. Carlisle ask you gentlemen to take back back to your members or the employees of your group

the question of whether or not they were desirous of becoming affiliated with the I.B.E.W.U? A. That is a rather difficult question to answer. Mr. Patrick Kerry, chairman of the Brooklyn Company, specifically, point blank, asked Mr. Carlisle if we were supposed to bring back to the employees—however, if he was supposed to bring back to the employees of the company that he represented that they were supposed to join the I.B.E.W.U. and his answer was yes. There were several other talks made by different council chairmen. Mr. Drury of the United Electric Light and Power Company and of the 578
Westchester got up and told Mr. Carlisle that he would like to inform him of an incident that had happened to the Westchester and to the Yonkers Company, in 1926—He said—

> Judge Ransom: I object to the witness bringing in anything that is as remote as that; any evidence of what he heard anyone else say. I do not see that that conversation which is as far back as 1926 would be relevant in this matter at all under any possible consideration. It is far too remote.

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> Trial Examiner Gates: You may answer subject to a motion to strike.
>
> Judge Ransom: Exception.

A. Mr. Drury stated that in 1926, the I.B.E.W. attempted to organize and did organize the lineman and the cable splicers and other men and their respective helpers of the Westchester Light and Power Company and of the Yonkers Light and Power Company and after belonging to this organization for several months, paying dues and also the required initiation fee that they presented, through this organizaton, certain definite de-

mands on the management of the Westchester Light Company and the demands were refused and they were advised to go out on a strike and they did go out on a strike and after they were out on strike for about three days, they attempted to contact the people that were supposed to be handling the money for them. They found that these people had left town and he went on to add that as he understood it there were indictments in six or seven different places in Westchester County then against those people and he said that the people of West-
581 chester and Yonkers had been robbed in this fashion, and they had had this matter rubbed into them pretty hard and he said, "I will have a damned tough time selling it to them all over again."

I, myself, asked Mr. Carlisle several questions. One of the questions I asked him—

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Judge Ransom: One moment. I want to clear up this matter first. I now move to strike this matter as too remote and not within the issues here in any possible charge of the complaint to
582 which this matter relates.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. I asked Mr. Carlisle whether or not it was true that he had or was recognizing the bargaining agency for the 40,000 employees of the Consolidated Edison Company, an organization which had no membership among the employees of the Consolidated Edison Company.

Q. Mr. Carlisle answered that there were members of the I.B.E.W. among the employees of the Consolidated Edison Company and that while he had no way of knowing exactly how many members there were, that he could at least guarantee that before the following night there

would be many, many more members enrolled in the I.B.E.W.

As I recall it, Mr. George Parker then requested that the meeting be adjourned in so far as the management was concerned and that the members of the management leave the room and give various general councilmen an opportunity to talk the situation over and it was a surprise to them, adding particularly a request to Mr. Carlisle to withhold sending the letter to Mr. Tracy granting the I.B.E.W. recognition for the employees.

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Mr. Carlisle said that he would be at the disposal of this body at any time that they wanted to talk to him but that they could not agree to withhold the letter of recognition to Mr. Tracy.

We subsequently found out, when we went out to lunch, that the newspapers had the story in it at one o'clock, the early edition papers, that the recognition had been granted to the I.B.E.W. to represent the 40,000 employees of the Consolidated Edison Company.

Q. (By Mr. Moscovitz) Do you mean that recognition had been granted at the time you were in or before the 585
meeting you had with Mr. Carlisle, that you have just testified about? A. Yes, it was obviously prior to this time because that letter must have already been sent, otherwise newspapers could not have come out and said that the Consolidated Edison Company had granted recognition to the American Federation of Electrical Workers.

Judge Ransom: I object, and move to strike it out.

Trial Examiner Gates: It may stand.

Mr. Ransom: This is characteristic of the testimony, that he assumes that something must

be true which actually was not true and is perfectly susceptible to proof one way or the other in any event, and if your Honor wants to take his positive assertions or speculations about something where there is no possible way of the witness telling you the facts, that is one thing. The wit-

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ness could not know this.

587 The Witness: I, personally, saw it in the early edition of the New York Evening Journal. I remember seeing that when I went out for lunch. I was accompanied by several other people who also saw it.

Q. (By Mr. Moscovitz) At this time did you have any further conversation with Mr. Carlisle regarding the I.B.E.W. or the C.I.O. or any other labor organization? A. Yes, sir, I did. I gathered from different statements and from the way Mr. Carlisle had been talking, I gathered a certain, definite impression in my mind and decided and did, in fact, ask Mr. Carlisle about it.

588 I asked him if it were true that the management had not before this time considered all labor organizations as an unnecessary evil or evils and that at that time they had come to the conclusion that they were then a necessary evil and of the two evils he would prefer the employees to become associated with the I.B.E.W.

Mr. Carlisle's answer to me was "You have put it very aptly and very precisely, and that is very well said".

In addition to that, before the meeting adjourned, Mr. Carlisle made certain definite statements; that is, as plans were developed and brought up to his consideration for the formation of these independent organizations.

Mr. Carlisle stated that the people that were having

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these put through in Washington and in New York state were definitely labor organization people and that the administration of these laws by the various labor boards, in them the labor organizations would have a great deal to say about them and that undoubtedly they would be administered by boards that were favorable to labor organizations and the fact of the matter was he thought that the American Federation of Labor people would 590
predominate in that, and would take a very active part in that set up.

Q. And when this reference was made as to who was going to sit on the boards, was there a reference as between the I.B.E.W. or the American Federation of Labor and the C.I.O.? A. I cannot recall.

Q. When he spoke of the kind of men who would sit on the State Labor Boards, did he make any mention of from what organization or organizations those men would come? A. Oh, yes, he said definitely that these people would be selected from the ranks of the American Federation of Labor, that they would be the people 591
sitting on the Labor Boards and administering these boards.

Q. Did he make any further statement regarding these boards? A. Oh, yes, he said that if—let me see. I would like to recall this as exactly as I can—he said that these—an independent organization would be contrary to the existing laws and that they would not re-

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ceive much consideration from these existing labor boards, and that to sponsor or to recognize an independent organization would create the public opinion

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that while they did not operate under the Wagner Act, that they were not even attempting to live up to the spirit of the law, and he added that the violation of the Wagner Act called for a fine of $5,000 and one year in jail and he added with a smile that while he wasn't particularly interested in the $5,000 fine, there wasn't any member of the management that would care to spend a year in jail.

Of course, that got a big laugh and one of the fellows then injected himself into the picture. I just don't recall
593 what one, and asked him whether or not it was true that while the management of the company were desirous of living up to the spirit of the law, they were not attempting to live up to the letter of the law in giving the employees the opportunity to select their own labor organization. I don't think there was any answer to that. At least, I don't recall hearing any.

Q. Did the meeting continue after that? A. I believe the members of the management then adjourned. They left the room and we, as a body, representing the 40,000 employees in the company continued the meeting.

Q. What did you do in your meeting? A. Well, it
594 was a joint meeting. We all stayed there. The only ones that left were the management of the company. The

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members of the management. And in all meetings there must be, in order to conduct a semblance of order, there must be a chairman appointed to these meetings and, as Mr. Parker and Mr. Ganley were acknowledged chairmen of the groups having the largest members, and, as Mr. Parker and Mr. Ganley had never gotten along, they had consistently refused to affiliate their representation plans, they were just about on speaking terms—we decided to elect temporarily Mr. Parker as co-chairman of

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this particular meeting in order that there might be harmony or some order or a definite idea gotten from the meeting.

Q. Tell us then what the purpose of the meeting was, what took place?

Judge Ransom: Objected to as incompetent, in no way binding on the respondent, not within any issue here. We have nearly an hour of testimony now on which you can find nothing in the complaint or charge. It relates to an organization concerning which no complaint is here made. 596

Trial Examiner Gates: Overruled.

Judge Ransom: Exception.

A. After the members of the management left, different fellows got up and went into flowery orations as to the dirty deal the management had given them, that they had carried the banner for management for four years and that the management had not taken them into con-

sideration in finding out what labor organization they wanted to be affiliated with. I, personally, resented very 597
much being made a company stooge by the management distributing cards for the management to the employees, asking employees to sign cards stating they were desirous of having the present Employee Representation Plan as their sole bargaining body. I recall the cards given to us by the management of the company, at the same time that the C.I.O. announced through the newspaper their plans to organize the utility employees, and in my opinion these cards were given out to stave off the C.I.O. drive until such time as Mr. Carlisle and Mr. Stillwell could have time to organize the Edison Company employees. The meeting continued. There were various

talks and discussions. Finally the consensus of opinion was that inasmuch as the Doyle-Newstein Bill had not gone into effect, and inasmuch as we were told we did not operate under the Wagner Act, there would be nothing at all to prevent us as various council chairmen, from presenting our various chairmen with expense accounts, varying different sums from 100 to 1,000 dollars, if necessary, in order to get the necessary amount of money to start an independent organization for the employees of the Consolidated Edison Company.
599 There was no definite move made on that, as I understand.

Q. (By Mr. Moscovitz) These cards that you referred to immediately before the last statement as a card cir-

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culated among employees so that they might indicate whether or not they wanted the present employee representation plan to be continued, who gave them to you? A. I received the cards that I had and I had approximately 500 of them. From Mr. George Parker, the Chairman of the Consolidated Gas Company general
600 council, that is who I received them from. I had arrangements made with a Mr. Sargeant, assistant personnel director of the Consolidated Edison Company, to get these cards from him. I had gone down and spoken to him the particular afternoon that these cards were involved, but unfortunately they had not arrived from printers at that time, and after spending a great deal of time in Mr. Sargeant's office waiting for them, he decided that when they arrived he would send them up to Mr. Parker and I could get these cards from Mr. Parker which I did.

Q. Did you then circulate them? A. I did.

Q. And you got their signatures? A. I did.

Q. This too was during your regular working hours? A. Yes.

Q. Is this the card to which you referred, or is that a sample of the card which you distributed? A. This is evidently the same card. I have about 300 more of them.

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Q. And did the other representatives get similar cards? A. Yes they did.

Q. Do you know whether or not they distributed 602
them? A. Oh yes, very definitely.

Q. And did the employees then return the cards to you? A. Signed, yes.

Q. What did you do with them after they returned them? A. I kept the ones I had signed, but I was supposed to send not the cards themselves, but a report back to the management of the company, telling them the percentage of employees or the number of employees that were desirous of retaining the Employee Representation Plan as their sole bargaining body.

Q. Who was the management representative that you were supposed to submit this report to? A. Colonel 603
John Stillwell, vice president in charge of employee relations.

Q. Did you submit such a report? A. I did not have a chance to.

Q. Why not? A. By the time the men finished signing these cards, this meeting was called and we were told that we were practically no longer an existing body; there was no necessity for them.

Q. And you say these cards were given to you how

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soon after the C.I.O. came into being? A. Oh, within a few days.

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Q. And immediately after the distribution of these cards, before you made up your report you said this meeting with Mr. Carlisle took place? A. Yes.

Q. Would you mind reading into the record the printed language on the card which you say was circulated? A. "To the employees Representation Plan: I wish to hereby express my desire that the present Employee Representation Plan be continued for dealing on all matters with the company and I wish to be solely represented by such plan". There is a line for the per-
605 son's name. A following line to signify what company you belong to and another line for the department, another for the Bureau and another for the location.

Q. Was there anything further that took place at this meeting or did the men adjourn, this is the meeting of the general council members themselves? A. It adjourned by reason of another meeting. It seems that at the time that we were meeting with Mr. Carlisle the general council of the New York Edison Company—incidentally they had then named themselves the general council of the Consolidated Edison Company of New York. In addition to that, the former Consolidated Gas
606 Company council had also taken that same name. This

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general council of the Consolidated Edison Company—by that, I mean the former New York Edison Company council,—were holding a meeting that same day and Mr. Ganley was very anxious to get back down to his counsel and explain what had happened and what we had, as a group of employees, decided to do, and he invited us to attend that meeting, and the greater portion of the employees present did attend the meeting with Mr. Ganley and his council. That was also held in the company building at 14th Street.

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Q. Did you attend? A. I did.

Q. How many representatives were there? A. The entire general council of the New York Edison Company were present, approximately 25 or 23 men, I don't know the exact number. Some were incidentally council members.

Q. Who were they, do you remember? A. I don't recall their names.

Q. Any representative of management? A. No.

Q. What was the topic at that meeting?

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Judge Ransom: Objected to as immaterial, wholly outside the issues here, in no way binding on the respondents.

Trial Examiner Gates: Overruled.

Judge Ransom: Exception.

A. The topic of the meeting was the obvious deal the

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employees had received from the management of the company. Several people reiterated their stand that they had been carrying the banner for the management of the company for so many years, that the management had been unfair to them in recognizing any organization without first having consulted or talked to them about it, and there was again definite statements made that the various general council chairmen who represent the men who were present, should present to the management of the company requests for expense accounts, their own specific expense accounts, to have them get a certain amount of money to set up an independent organization among the employees of the different companies.

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Q. Now, was there anything further at that meeting? A. Nothing of any importance.

Q. Did you see any of the representatives of man-

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agement that same day outside of the regular meeting? A. Yes I did.

Q. Whom? A. Colonel John Stillwell.

Q. How did you happen to see him? A. At the meeting with Mr. Carlisle, Colonel Stillwell was the man I had been carrying on negotiations with from the group formerly known as the Bronx Gas and Electric Company. I spoke to him before he left the Board room that day, and told him that I would like to see him that

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afternoon and he told me that he would be glad to see me, that I should come up, call up his office first and then come up and see him any time during the afternoon, which I did.

I called his secretary and she told me to come up, and I did, and I went in and had a talk with Mr. Stillwell. Should I relate that?

Q. Yes. Tell us what took place. A. One of the first things that I said to Mr. Stillwell was that I would like him to see to it that the necessary wheels were set in motion to have me transferred out of the particular

612 department I was working in, and he wanted to know why, and I told him that through my activities as a general council chairman I had succeeded in antagonizing some of the various heads of that department and that I was sure they were only waiting for the opportunity to make me realize it and that now the general council no longer existed and that these people would have their opportunity and he laughed it off as being ridiculous and said there wasn't anyone that small in the Edison Company and so forth, and we had a discussion about the I.B.E.W. and we talked about the independent manner in which the Bronx group had attempted to remain by refusing to affiliate themselves with any of

the other existing councils at that time, and I wondered, to him, whether or not it would be possible if we had to go into the I.B.E.W. to get a charter from the I.B.E.W.

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that would cover all of the linemen and all of the men in the overhead construction departments in the entire system and I added that inasmuch as the American Federation of Labor was an organization on craft lines, that I did not think that that would be very hard to do and I wondered how I could get in touch with these 614
people, and he told me that he had their address, and he removed from his pocket a book, and he gave me the name of a gentleman up at the Hotel Roosevelt that I should go up and have a talk with. He didn't know how to pronounce the man's name. He spelt the name. The name was Bonizat, or something of that sort and he spelt it out and just prior to him spelling the name, we had been discussing American's, American ideals and American principles and when he spelt the name to me and I wrote it down it sounded rather funny to me, and I said that that didn't sound very American to me, and he said you couldn't judge too much from a person's name and I said I wasn't attempting to judge the 615
man, it was just in my thoughts, and he gave me the name of this Mr. Bonizat at the Hotel Roosevelt and told me if I got in touch with him and went up to see him and had a talk with him he would be sure that this man would be more than glad to explain the whole situation and the whole set up and what we could do and what we couldn't do.

Q. Now, before that, was there any discussion with him about the A.F.ofL., and the C.I.O., the policy of the

S. M. 93

company in regard to the two? A. Oh, yes, there was a very definite discussion.

Q. What was your discussion with him on that point? A. He talked about the C.I.O. and about the A.F.ofL. and I asked him, I wondered why it was that the management of the company had taken the step that they did take and Colonel Stillwell said that he personally did not think it was a good idea and that he had not been so very strong for it but there had been other people there and more people for it than he was and he thought the best thing to do was to go along with the step the management had taken, that it was for the best interests
617 of the employees of the Consolidated Edison Company, and we discussed the C.I.O. and the supposedly political affiliations, et cetera, and he said that where the steps that they were taking differed from the attitude and the action taken by other industries throughout the United States, he said that wherever industries had made their mistakes, that they had refused to confer with either the C.I.O. or the A.F.ofL., and according recognition to the A.F.ofL. would be a feather in the cap of the A.F.ofL., and that if other industries had followed in the move that they made, that it would be the definite wind-up in the smash of the C.I.O.

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Q. And was it after that that he gave you the name of the man that you were to see at the Hotel Roosevelt? A. Yes.

Q. Were you to see him regarding the I.B.E.W.? A. That's right.

Q. And did he tell you, did he give you any further instructions about what you were to inquire into at the time you saw this man? A. No, he didn't instruct me as to what I was to inquire into. He gave me the man's name and told me where he was and advised me to go up there and see him and assured me that, told me, the

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viewpoint I should take of it, that the 40,000 employees of any local of any labor organization, that those people could rewrite the constitution of that organization; they could dominate it and control it, that they would have enough voice in there to practically run that organization. And, frankly and honestly, he sold it to me at that time. I thought it was a good idea.

Q. You thought what was a good idea? A. That we could get in as a group, in one organization, one local of any labor organization and by the mere fact of having so many employees in it, if there was anything in there 620
that we did not like, that we thought was not good for the men, we should change that, we would have a voice large enough to have a definite say in the running of that

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local or that organization, and for that reason I thought association with the I.B.E.W. would be a good thing.

Q. I see. And was it your understanding at that time that an association with the I.B.E.W. would be one in which you had one large local for the 40,000 employees? A. Absolutely.

Q. Was that statement made to you by Col. Still- 621
well? A. Col. Stillwell did not specifically state that there would be one local for all the employees. He did say that 40,000 employees in any one labor organization could rewrite the constitution, and so forth.

Q. Did you then go to see this gentleman at the Hotel Roosevelt? A. No. I went to see a Mr. George Parker, chairman of the former Gas Company Council, at his office in the company building at 14th Street. I talked to him about different things, different subjects, and we spoke for a few minutes, and he said to me, "Come on outside, I want to talk to you."

Q. What is George Parker's regular job with the company? A. Chairman of the regular council, or was.

Q. Is that all he is? A. For as long as he had been chairman of the council, that was all he did.

Q. No other kind of work? A. None that I know of.

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Q. Had a regular office and desk? A. Yes, secretary and files and so forth.

Q. And spent his time on this employee representation plan? A. Yes, all of his time.

Q. And Mr. Drury, did he have the same kind of job?
623 A. No, you see, the Yonkers and Westchester County groups did not have as large an employee personnel in them as the Edison Company and the Gas Company, therefore they didn't feel it advisable that they should devote all of their time to employee representation, but there was no limit to the amount of time they could spend on it, but they had no definite office.

Q. This Mr. Drury that you mentioned before as having protested with Mr. Carlisle against the men going into the I.B.E.W. Is he still employed by the company? A. No.

Q. What is he doing now? A. He is the business
624 manager of the Yonkers and Westchester local of the I.B.E.W.

Q. Do you know when it was that he became business manager? A. I don't know the exact date.

Q. Was it very long after his protest against the I.B.E.W.? A. No, I understand not. I was given to believe it was a very short time after.

Q. Do you know whether or not it was a short time

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after? A. Yes, it was a very short time.

Q. Now, when you went into Mr. Parker's office, what was the conversation you had with him?

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Judge Ransom: Objected to as incompetent. I object to this whole line of testimony. Obviously, anything said by the chairman of this general council or that general council of another company can be in no way binding on the respondents.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. It was not very important, but, as I said, Mr. Parker called me outside of his office and we walked a few feet from the door and he said to me, "Have you seen the Colonel?" meaning Colonel Stillwell. And I said yes, and he said, "Did he give you any one's name?" And I said yes, and he said, "Whose name did he give you?" And I said "Mr. Bonziat in the Hotel Roosevelt." And he said, "Oh, hell, he is not there any more. I just called him up. I talked to a different man."

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I said, "To whom did you talk?" And he said, "Mr. Beretz, room 1621 at the Hotel Roosevelt. He is taking Mr. Bonizat's place."

Q. (By Mr. Moscovitz) Who is Mr. Beretz? A. Assistant to the International President of the I.B.E.W.

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Q. Continue. A. I got his address, as I said, I decided that that was about enough for that day, and went on home.

Q. Did you finally go to see Mr. Beretz? A. I did, the following day.

Q. Do you recall the date? A. Yes, that was Wednesday, April 21st, Wednesday morning, April 21st, the day after Mr. Carlisle had made his statement to us.

Q. That was 1937? A. That's right.

Q. Tell us what took place when you went to see Mr. Beretz. A. Well, I first called up Mr. Beretz over the

phone and told him I was the chairman, or had been the chairman of the general council in the Bronx and that I would like to get in touch with him, that I understood he represented the I.B.E.W., and he said yes he did, and that I should come down and see him, and we made a tentative appointment for ten o'clock that morning and in talking around among the different other employees, stopped me and wanted to know what it was all about and so forth and so on, I was a little late for the appointment, and when I got to the subway I called him again
629 and I said I would be a little late and he said that was all right, to come on down to see him anyway.

Finally, I got down to see him and I called him up

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from the lobby and I had to wait a few minutes and I then went up to see Mr. Beretz.

One of the page boys paged me in the lobby, and I saw him, and when I got in I asked if he represented the I.B.E.W. and he said he did, and I asked him if he would be offended if I would ask him to prove that he did; that after all, anybody could tell me they represented the
630 I.B.E.W., and I didn't know who he was, so he said to me, "You have me in a tough spot. I don't happen to have any credentials, but," he said, "maybe this will show you that I do represent the I.B.E.W.," and he reached over to the top of his bureau and he had quite a large stack of application cards, pledge cards in the I.B.E.W., and he showed me those and he said, "How are these?" So I said they weren't so good, that in my opinion any one could get those, too. So he opened his dresser drawer and brought out a blue bound document, and he said, "How is this?" And he opened it and on the top it had "agreement Consolidated Edison Company of New York, Inc., between the International Brotherhood of Electrical Workers of America."

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So I said to him that is all right, so he closed it and put it back in the drawer and we began to discuss the things I had come down to discuss with him.

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Q. What was your discussion? A. I went down there primarily to find out what effect enrollment in the I.B.E.W. would have on the employees of, particularly the former Bronx Gas & Electric Company. There were certain definite benefits that we were receiving, and I wanted to know whether or not we would continue to retain those benefits if we joined the I.B.E.W.

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For example, we received vacations with pay. I wanted to know if we would retain that vacation with pay. We had certain definite sick benefits. We have insurance that we carry and so forth, that are and were considered by the employees an advantage to them, and I was trying to find out for the employees that I represented whether or not they would retain those benefits.

Mr. Beretz informed me that the prime purpose of a labor organization was the protection of the members of a labor organization. He told me that labor organizations were dependent entirely upon their membership and that they would continue to represent them only for as long as they done a good job for them. It was raining that day and, as I am a lineman, naturally particularly interested in linemen. We do not, or we had not, up until that time, been working in the rainy weather, or when it rained. We would stand by for emergency work. The nature of the work we do is rather hazardous. It is not very easy for a lineman to work on 3,000 or 2,200

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S. M. 101

volt lines in the rain, and the management of the company realized that and they had not asked us to work

in the rain. We did stand by for emergency work, and emergency work that came up, whatever it was, whether it was raining or not, we did that and we did it gladly. I mentioned that to Mr. Beretz. I brought out the fact that while we did not actually work when it rained, we would get paid for it by the management of the company by virtue of our standing by, and we wanted to know if the I.B.E.W. would guarantee that to us, inasmuch as that comprised quite a great deal of our years of time, and he didn't give me any definite answer.

635 He told me he could assure me that the union would take up where we as employee representatives had left off. And I left Mr. Beretz and went back to the company where I had been employed.

Q. Did you attend any other meetings that day regarding the same question? A. Yes, I did.

Q. Where? A. At the premises of 161 Brady St.

Q. What is that place? A. That is the place known as the Linemen's Recreation Room of the former Bronx Gas & Electric Company. It is a place where all the meetings between the linemen and their elected representatives in the employee representation plan met. It

636 S. M. 102

was the place where they stayed when it rained and so forth and so on.

Q. Is that a big property owned by the company? A. Oh, yes.

Q. Was there a meeting in progress there? A. No, I called that meeting.

Q. Of whom? A. Of all the linemen and their helpers and chauffeurs in that company.

Q. How many men attended? A. Over 50.

Q. Through whom did you arrange for the calling of that meeting? A. With the supervisor of that de-

partment. Incidentally, the meeting was called after working hours.

Q. I see. And how did you arrange for the meeting to be called? A. I spoke to the supervisor and he made the necessary arrangements. I believe arrangements are—

Q. Who was the supervisor? A. Mr. John Diner.

Q. Yes. A. There is a man at 41st Street and First Avenue, a company employee, by the name of Mr. Edward Haywood. He is the man that foremen of our side 638

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gangs such as linemen, call up periodically during the day to receive instructions as to where to go to work and what to do, and if there is any certain job that they should take care of right away. He is the man that these foremen are calling up during the day and there is no other way that any one can get in touch with these linemen only through this Mr. Haywood, and Mr. Diner evidently got in touch with Mr. Haywood because the meeting was called for five o'clock that evening and all of the linemen attended.

Q. What took place at the meeting? 639

Judge Ransom: This is highly incompetent, in no way binding on the respondents. How can evidence of this sort be made against the respondents, by what took place at a meeting of employees?

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. We discussed the American Federation of Labor and the C.I.O. There were fellows there that thought they should have the right to choose their own organization and they said that it seemed to them that the C.I.O. had

640 *Harold Straub—For N.L.R.B.—Direct*

been grabbing all the headlines; they had been doing the best and the biggest job for the various employees in the various industries, and they thought they should have the right to select whatever organization they wanted to join. At that particular time I was still of

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the opinion that the I.B.E.W. had to do a good job for the employees. I was keeping in mind the fact that we would be, as I thought, in one local, 40,000 employees
641 in one local, dealing directly with the management of the company instead of as we had been doing in the employee representation plan, having at least seven different employee representation plans and we had seven different managements to contend with, and the acknowledged head of the company was Mr. Carlisle of the Board of Directors, and I was in hopes that through the I.B.E.W. we could get into one local instead of seven different managements, and all of these points were discussed at that meeting, and I finally wound up, during the course of the meeting, I told the fellows that I would not advise them to join any labor organization, any one
642 whatever, whether it be the C.I.O. or the A.F.ofL., or the I.B.E.W., or any other organization, unless they could first get a copy of the constitution and by-laws of that organization and read it, familiarize themselves with it, and know just what type of organization they were joining, and when I said that one of the follows jumped up and said he wanted to know why it was that the employees had been called down that day into the office of Mr. E. E. Hill, assistant general superintendent of the overhead construction department at 41st Street, and had been coerced and intimidated into signing I.B.E.W. pledge cards.

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Judge Ransom: I move to strike out the answer as highly incompetent and improper, in no way binding upon the respondents. Evidence of that sort cannot be made pertinent against the respondents as something said by some one in a meeting of employees. That is no evidence of any action on the part of Mr. Hill or any one authorized on the part of the company.

Trial Examiner Gates: It may stand.

644 Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Who was the employee that made that statement? A. A man by the name of Felix O'Donnell, a lineman. There are other employees that heard this statement made.

Q. Who were the other employees? A. Mr. Luther Grove; Mr. Phil Blackledge; Mr. Henry Lang; Mr. William Lamertz; Mr. Harry Pierson. They are a few of the ones that heard the statement made.

Q. When you say they heard the statement made, are you referring to the statement that was made by Felix O'Donnell? A. That's right.

645 Q. What else was said at that meeting? A. Not very much of any importance.

Q. Any further statements made regarding Mr. Hill? A. No, the only statement what was made was, as I said, that the people wanted to know why they should be

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brought down to Mr. Hill's office and why they had been told they had to sign the I.B.E.W. cards and that they had to join the I.B.E.W.

Q. Had there been up to this point any submission by the management or the I.B.E.W., so far as you know,

of a constitution or a by-law of the organization for the employees to read? A. No, sir, there was not, not that I know of. We tried very hard to get those constitutions and we just couldn't get them.

Q. From whom did you attempt to procure these constitutions? A. Well, at that time, while I was talking to Mr. Beretz, I asked him if he had a copy of the constitution with him, then, that I could have, and he told me unfortunately that at that time he did not have any with them and therefore he could not give them to me and we
647 had made other attempts through different people whom we thought might have them, and we did not get them.

I finally succeeded in getting one of those copies after a length of time had elapsed.

Q. Did the meeting then adjourn? A. Yes.

Q. And was there another meeting? A. Yes, the following day.

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Q. Where? A. 14th St. and Irving Place in the company building, in the auditorium.

Q. Who called that meeting? A. Mr. Ganley.

648 Q. Does Mr. Ganley also have a position like that held by Mr. Parker? A. Identically the same.

Q. Does he have an office in the company building and a desk and a secretary? A. At that time, yes.

Q. Did he spend all of his time at that time as Mr. Parker did in employee representation plan work? A. Yes.

Q. Do you know at whose suggestion Mr. Ganley called this meeting? A. At the suggestion of the employees, at the suggestion of his own council.

Q. What was the purpose of the meeting? A. The purpose of the meeting was to formulate plans whereby they could form their own organization.

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Q. How many employees attended this meeting? A. Approximately 400.

Q. And from what companies? A. All of the various companies. There was no—the only price of admission

S. M. 106

was membership in the company. I mean by that your company identification card.

Q. Were these employees generally, or simply representatives of the employee representation plans? A. 650
The greater majority of them were employee representatives of the employee representation plan. I think there was a few ordinary employees off the shift in there, but the biggest majority of them were employee representatives and members of the general councils.

Q. Was the meeting held after working hours? A. Oh, no.

Q During working hours? A. No, that was ten o'clock in the morning.

Q. Who presided at the meeting? A. Mr. William P. Ganley.

Q. Do you know with whom he made the arrangements for the men to attend this meeting? 651

Judge Ransom: : Objected to. This witness cannot testify to that.

Trial Examiner Gates: He can answer if he knows.

A. There were no arrangements needed to be made. Any bureau or general council representative could at any time attend any meeting called by any head of his particular council. The only thing necessary was to inform the man that he might be working for at that time that he was going to a meeting. He did not have to tell him when, where, how or why.

S. M. 109

Q. What took place at this meeting? A. There was a lot of discussion pro and con about the formation of different organizations. There were people there definitely advocating the C.I.O. There are other people on the part of the I.B.E.W. and there were other representatives who believed that the employees should have a right to form their own organization if they so desired.

Q. Did Mr. Ganley preside? A. Yes. During the meeting there was a motion made that the employees be
653 polled, that a vote be taken among the employees of the Consolidated System and that a ballot be drawn up, a secret ballot, and that each employee be given the opportunity to vote on this ballot. The ballot would have the name of three organizations, would have the name of the I.B.E.W., or the International Brotherhood of Electrical Workers affiliated with the A.F.ofL. above the name of the United Electrical & Radio Workers of America affiliated with the C.I.O., and it would have a space on there for them to signify whether they wished to belong to an independent organization of their own and it would have further spaces on there to say whether they
654 wanted to belong to any union at all.

That motion was made and carried.

Q. Anything done about it? A. No.

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Q. Why not? A. That particular meeting was adjourned.

Q. Until when? A. Until three o'clock in the afternoon.

Q. What happened then? A. Well, they reconvened in a different location. It seemed that somebody else wanted to use the auditorium and they had to reconvene in the South Cafeteria on the 19th floor, No. 14 Irving

Place, and Mr. Ganley incidentally also presided over that meeting and at that meeting he read a letter that had been addressed to him by Mr. Tracy, the International president of the I.B.E.W., making them a proposition, of showing them how they could join the I.B.E.W. and still retain their present set-up as company unions. I mean by that, that they could retain their present employees personnel and these different general councils. They would have the same presidents and the same officers, but all they would have to do was to go over to the I.B.E.W. and he also read a letter from Mr. Martin 656
Wertzing, president of the United Electrical & Radio Workers of America. I don't recall the exact wording, but he realized their desire to retain pure local autonomy, and this was being done in order to use up time until Mr. Carlisle could attend this meeting. They had asked Mr. Carlisle to attend this meeting on the 19th floor.

S. M. 111

Q. You mean this discussion pro and con of the C.I.O. and the A.F.ofL. was using up such time until Mr. Carlisle got there? How do you know that that was the situation? A. It was evident, because they kept looking 657
at their watches and wondering what time Mr. Carlisle would be free and finally Mr. Ganley appointed a committee to go up and get Mr. Carlisle.

Judge Ransom: I object to that.

Q. (By Mr. Moscovitz) Did the employees know that Carlisle was to attend this meeting?

Trial Examiner Gates: It may stand.

A. The understanding was that an attempt would be made to get Mr. Carlisle to attend it. At that time nobody knew that he would accept, but they all knew that

he was being asked to attend the meeting and he naturally did.

Q. When did he come? A. Mr. Ganley appointed a committee. I can remember their names, Mr. Krukel, Mr. Johnson and a Mr. Joy, were assigned as the committee to go up and get Mr. Carlisle, as Mr. Ganley put it, and bring him down to the meeting, and they did, and Mr. Carlisle arrived at the meeting and they started in asking him a lot of questions, why the employees, why the management of the company had recognized the
659 I.B.E.W. for the employees, and all questions practically the same, why, why, why. The whole thing was why he

had done this and finally Mr. Ganley decided that inasmuch as all of the questions were practically alike, that they have a prepared list of questions that they could ask Mr. Carlisle, and if he would answer them it would be all right. I remember some of those questions, not all of them.

Q. What were they? A. One of the questions that were asked was whether or not the management would
660 allow this vote to be taken that I had mentioned. Mr. Carlisle said that the management could not possibly pay for it. He wanted to know if the management would be expected to pay for the taking of this poll, and he said that the management couldn't possibly pay for it. He pointed out that they weren't living up to the spirit of the law if they would pay or finance a poll that would be taken on the employees to see what organization they wanted to belong to.

Another that was asked Mr. Carlisle by Mr. Ganley was, would he stop the various department heads from intimidating and coercing the employees of the entire system from joining the I.B.E.W. and Mr. Carlisle said

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that he wouldn't start anything, that he never issued an order that would start that, therefore he could not issue an order that would stop it, and Mr. Ganley insisted he said, "You know what is going on," and he said, "No, I don't know what is going on and I cannot issue an

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order stopping something that I did not start in the first place."

They then asked him why the organizers for the I.B.E.W. were allowed in the building, why the various department heads were assuming the position of organizers for the I.B.E.W. and the organizers from the C.I.O. were kept out or were being thrown out of the building as fast as any one knew who they were and Mr. Carlisle said they were not then and had never considered policing their building, and as far as he knew, anybody could come in, and what they said to the employees was one of his concern. 662

Q. Did Mr. Carlisle point out, or did any of the employees point out that such an impartial election could have been conducted without expense to either side by the National Labor Relations Board in the interests of avoiding any possible labor dispute? 663

Judge Ransom: Objected to as incompetent and not within any issues of this proceeding.

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.

A. No, and pointed out—

Q. Does that end the line of questions and answers as you recall them? A. It ends the prepared questions and answers, but nevertheless there were questions that continued. Several different people insisted on jumping up

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and asking Mr. Carlisle questions. One gentleman got up and made a definite statement to Mr. Carlisle. He told Mr. Carlisle that in his opinion he, Mr. Carlisle, had sold the 40,000 employees of the Consolidated Edison Company down the river and got a tumultuous ovation, and everybody jumped up and applauded and waved their arms and thought that that was swell and the questions continued along those lines until a gentleman got up and said that inasmuch as the questions were all
665 alike, that he thought it might be well if they excused Mr. Carlisle, which they did, and this committee went back with him to his office, I presume, and the meeting wound up by Mr. Ganley saying, "I will now adjourn the meeting and I want all of the council members to meet me in my office in room 1237, and we will form an independent union."

That is how the meeting broke up, and that is how the meeting adjourned.

Trial Examiner Gates: We will take a five-minute recess.

666 (Whereupon, a short recess was taken.)

S. M. 115

AFTER RECESS

Q. (By Mr. Moscovitz) Mr. Straub, just before we recessed, you told us that Mr. Ganley had stated that a meeting should be held immediately for the purposes of establishing independent organization? A. That is right.

Q. Was this meeting held? A. Not that I know of.

Judge Ransom: You mean you do not know?

The Witness: What is that?

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Judge Ransom: Do you know whether there was or not?

The Witness: There was no meeting held that I know of.

Q. (By Mr. Moscovitz) Did you call any meeting of any nature? A. I attempted to call a meeting.

Q. When? A. That day.

Q. How? A. I got in touch with a man by the name of—a man up on Brady Street.

Q. Mr. Heywood? A. No, Mr. Dinan.

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Q. What was the purpose of the meeting, that you were to call? A. The reason for calling the meeting—I called Mr. Dinan to find out and asked him if he would hold my pay for me that day to the next day. I found out that there were I.B.E.W. cards being distributed

S. M. 116

among the employees of the former Bronx Gas Company by the supervisors and heads of departments of that company. I called to try to get those fellows together and advised them not to join any organization and to tell them just what had taken place at the meetings that were being held that day.

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Judge Ransom: I move to strike out the answer. It is in no way associated with the interests which are being taken up here; with the issues which are before us, or possibly could be before us in the complaint.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. I left the building at 14th Street as the meeting of Mr. Ganley's group—bear in mind, I was not a member of Mr. Ganley's council. Therefore, I had no right whatever to attend any meeting called by Mr. Ganley.

Consequently, Mr. Ganley simply invited me to attend that meeting. I was chairman of a council that had retained its independence and its individuality and had not affiliated with any of the other existing councils.

I went back over to Brady Street as fast as I possibly could, thinking I was going to attend a meeting of the linemen that I had met with the previous night. When I got there I found out that the meeting had not been called, that a man by the name of Mr. Heywood, a man whose responsibility was the mechanics of calling

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S. M. 117

the meeting and notifying these different foremen when they called up over the phone that there was a meeting to be held that night, as he had done the previous night, had not notified any of the foremen, and that they had not, in turn, notified the linemen working for them that there was a meeting that night.

However, I did meet some of the linemen as they were coming in on their trucks from work and some of them told me that supervisors—or at least that Mr. Thomas Courtney had been going around that day with I.B.E.W.

672 pledge cards visiting gang after gang and man after man, going from one gang to the other between the hours of one o'clock and five o'clock and using a company car, and calling the men, the linemen, over to that car, individually, and telling them that they had to sign up the I.B.E.W. cards. He argued with them, telling them that if they did not sign up, that they would find themselves left out in the cold.

I have men that definitely have told me that and that have given me definite statements of a transaction that has happened as I have related it.

Q. Do you have men who also signed cards under those circumstances? A. They all signed the cards.

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They felt as though they had to sign the cards in order to keep their jobs with the Consolidated Edison Company.

Judge Ransom: I move to strike out the wit-

S. M. 118

ness' statement as a voluntary statement, purely hearsay and wholly unfounded on fact. How could he possibly know how the men felt.

Trial Examiner Gates: Did they tell you that or not?

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The Witness: They certainly did, yes, sir.

Trial Examiner Gates: It may stand.

Q. (By Mr. Moscovitz) Are these cards that I now show you I.B.E.W. cards and signed by these men? A. Yes sir they are, yes sir.

Q. Is the last card here signed by a Miss Mildred— A. This one here?

Q. Yes. A. Oh, Miss Mildred, she is an employee of the Consolidated Edison Company, an employee at No. 43 Webster, I believe it is, although I would like to check on that, but anyhow she is the secretary of Mr. Patterson, on Mr. Peterson, manager of the Commercial Relations of the former Bronx Gas and Electric Company. She has some official job in the Bronx Gas and Electric Company and—that is, he has, and that girl is his secretary.

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Judge Ransom: I could not hear that answer very well because it was so low I could hardly make it out.

Trial Examiner Gates: Speak a little louder please.

Q. (By Mr. Moscovitz) How did you happen to have this card? A. Well, I collected $1.50 from her for her

initiation fee in the I.B.E.W., on company time, on company property, and in a company building.

Subsequent events showed that Mr. Ganley came to the conclusion, evidently, at a later date, that I was not being active enough in collecting these initiation fees and he got different people in the Bronx that I was supposed to bring into the I.B.E.W., to check up on me, and then he sent a man around—he sent a man up to go around with me.

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Judge Ransom: I move that that be stricken out as purely this witness' conclusion as to the workings of another man's mind and by no possible assumption can it be taken as evidence of anything.

Q. (By Mr. Moscovitz) What did he say to you; did he say that? A. Well, I—

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Judge Ransom: Just one moment please. I still have my objection and I think it is a proper one to make at this time. I move to strike out this witness' speculations as to what he thought that Mr. Ganley thought. I submit that it is not proper to make a guess this way, of any fact which should be proved by the usual rules of evidence and that it is certainly not proper to make out a case in this manner.

The Witness: If he wants to make an assumption in that regard, he should make it by way of an argument in behalf of his position and in the event he does he should be down here and not on the witness stand.

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S. M. 120

In any event he has been allowed great latitude in saying what he thought that he thought and he certainly is not entitled to say what someone else thought. Therefore, I move to strike.

Trial Examiner Gates: Did Mr. Ganley make any such statement to you?

The Witness: Mr. Ganley, at his office, told me specifically that he had heard that I was doing a bad job and that I was going around talking for the C.I.O. and I was not talking for the I.B.E.W. of the A.F.ofL., and he thought that I should turn over a new leaf and get wise to myself and get these cards and go out and collect the money for these dues and bring them into the office.

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Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) How did you happen to circulate these cards and collect initiation fees from employees? A. I, unfortunately, am a charter member of Local B-829 of the I.B.E.W., but I do not consider myself now a member of the organization.

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Q. When did you become a charter member? A. The day after this meeting that was held on Friday.

Q. The meeting that was held with your linemen? A. The day after we were supposed to have a meeting with the linemen. The day after the meeting with Mr. Car-

S. M. 121

lisle and so forth and so on.

Q. Yes. When you were supposed to have a meeting with the linemen, you say they did not respond to the call, or the call was not put in for them to respond to? A. That is correct.

682 *Harold Straub—For N.L.R.B.—Direct*

Q. You spoke with some of them as they came in from their work? A. Yes.

Q. What was the conversation you had with them when they came in from work? A. They told me—

Judge Ransom: I object to what he said to them, as in no way proper testimony in this case. I object to it on the further ground that what he said to them is in no way binding upon this respondent herein.

683 How could it possibly be that what he said to some unidentified man is binding upon these respondents? You cannot make evidence in a quasi-judicial tribunal in any such manner as this.

Trial Examiner Gates: Objection overruled. If he gives the names and the conversations with them, it will be admissible.

Judge Ransom: My objection is that there was no representative of the company present. My further objection is that this is not in any way

S. M. 122

684 probative or binding upon the respondents. You cannot create evidence by merely having one employee say to another employee certain things under certain circumstances which give rise to no pre-sumption of estoppel or admission by conduct or otherwise on the part of the respondents.

Trial Examiner Gates: Overruled.

Judge Ransom: Exception.

A. These employees told me that they had not been informed that there was a meeting taking place that night, as on the previous day they had been notified of a meeting.

Q. (By Mr. Moscovitz) Who were these employees?

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A. An individual by the name of Blackridge,—no, that was a Mr. Henry Lang, a Mr. John Walsh, a Mr. Henry Smoker, a Mr. Frank Gould, independently of any call, went up there with me expecting to attend this meeting. They told me that Mr. Thomas Courtney—no, that is wrong—Henry Gould did not tell me but these other three fellows told myself and Mr. Gould that Mr. Tom Courtney had been around that afternoon telling them that they had to join the I.B.E.W. and if they were wise and smart and knew what to do, they would join the I.B.E.W. or they would be left out in the cold.

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Q. What is Mr. Courtney's job? A. Oh, he is—since the merger of the various companies, I understand that all titles of various supervisors and department heads have been removed—their titles have been removed and

S. M. 123

he was acting in the capacity at that time of Assistant General Superintendent of the overhead construction department of the Bronx.

Judge Ransom: What was his title?

May we have his title instead of this witness' characterization of what it was?

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Q. (By Mr. Moscovitz) Do you know what his title is or was? A. He had no title. There was no man up there that had any title, any of the boys, any of the supervisors, their titles had been removed with the merger. They were waiting to be assigned new titles.

Trial Examiner Gates: Can you give us his title prior to the merger?

The Witness: He was the general superintendent of overhead construction in the West Bronx.

688 *Harold Straub—For N.L.R.B.—Direct*

After the merger there these two overhead construction departments were combined with one location at 155 Bridge Street, and the man who acted as the electrical engineer of the Bronx—the former Bronx Gas and Electric Company in charge of that work was put in charge of the overhead construction department for that company or rather all of us in the West Bronx group, and this man that had been in charge—that had been in charge of the West Bronx group alone was
689 acting as his assistant at that time.

Q. What else took place at the time these men came

S. M. 124

in and spoke to you about this? A. I contacted this Mr. Dinan and asked him if he had made any arrangements to call a meeting and he told me that he had called Mr. Heywood and that he had done his part and that he had informed Heywood the meeting was to be held and that further than that he knew nothing about it. There was nothing left for me to do then but to go home and go to sleep and I did.

690 Q. Did the men at that time show you the cards that they had signed? A. The cards were being retained by the supervisors when they were signed. When they got the men to sign them they did not put the cards back, they immediately signed them.

Q. Did you have a meeting the following day? A. There was a meeting called the following day.

Q. Was that April 23rd? A. That was Friday, April 23, 1937, yes.

Q. I see. Proceed. A. I went down to the 14th Street office; that is, the same place where Mr. William Ganley was, his office, to see what was being done. We

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were in a rather remote neighborhood and we were not in a position to have our fingers on what was taking place, and the only way I could see was to go down there and I did.

I found there was a meeting that had been called that morning for his general council and he asked me to

S. M. 125

attend that meeting. That meeting was also held in the Board Room at #4 Irving Place. At that meeting were various members of the general council and Mr. Ganley 692
and myself representing the employees from the former Bronx Gas & Electric Company.

Q. Did you know before you got there that such a meeting was to be held? A. No, I did not.

Q. Did you attend the whole meeting? A. I did.

Q. Were any representatives of the management in attendance at the meeting? A. No.

Q. What took place at that meeting?

Judge Ransom: I object as in no way binding upon the respondents herein.

Trial Examiner Gates: Overruled.

Judge Ransom: Exception. 693

A. The meeting was called by Mr. Ganley. As soon as it was called a man by the name of Joy, a member of the general council, made a motion that a leaflet or pamphlet of some sort be distributed amongst the employees of the Consolidated Edison System, informing them that the general council had outlived its usefulness and so forth and that they were no longer an existent body, and to that there were quite a few objections, quite

S. M. 126

a few of the people objected to that. One gentleman got

up and said that he thought we ought to hurry up, that they had an appointment to see Mr. Tracy at eleven o'clock, at the Hotel Roosevelt.

Q. Who was he? A. I beg your pardon?

Q. Who was the man that made that statement? A. I could not definitely say just who the man was that made that statement that we had the appointment.

Q. What is your best recollection? A. I recall Mr. Ganley saying that Mr. Tracy had informed them that he could not come to that meeting because the meeting
695 was held on company property but that he was going to be in the Hotel Roosevelt and they could meet him in his room and he would be very glad to talk to them.

Q. Had you known about this before the time of the meeting? A. No sir.

Q. What position did you take in this meeting? A. I was proceeding in this meeting as chairman of the General Council representing the employees of the former Bronx Gas and Electric Company. It was obvious that there was no longer an employee representation, and the people had elected me to represent them and they are trying to do something for them, and the only
696 way I could possibly continue to represent them was to attend the meetings that I had heretofore refused to

affiliate with; that is, attend a meeting of the council that I had heretofore refused to affiliate with, and that was the council of Mr. Ganley and his council, for various reasons, we had refused on prior occasions to affiliate with them.

Q. Was there any motion made to dissolve the general council and if so, by whom? A. By Mr. Joy, yes.

Q. Was it dissolved? A. No.

Q. What happened? A. Mr. Ganley pointed out that

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they had an appointment with Mr. Tracy at eleven o'clock and that they were then late and that he thought that they should adjourn temporarily until they went up to see Mr. Tracy and see what he had to offer, and hear what he had to offer, and then come back and reconvene the meeting.

Q. Did they all leave to go to see Mr. Tracy? A. Yes.

Q. Did you go up? A. I did go up.

Q. Who did you go with? A. I went up with three other fellows in a taxi cab to see Mr. Tracy at the Hotel Roosevelt. I asked Mr. Ganley about that. Mr. Ganley, 698
Miss Callahan and several other fellows were supplied with a company car to go up and see Mr. Tracy.

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Q. Who supplied them with the car? A. I presume the management, that is the only one that could give them the car, the transportation department.

Judge Ransom: I move to strike that out as a presumption on the part of the witness which is wholly unwarranted.

Trial Examiner Gates: It may be stricken.

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Q. (By Mr. Moscovitz) You do know that they went up in a company car? A. Definitely.

Q. You saw them? A. I did.

Q. Did you all then meet at the Hotel Roosevelt? A. Yes, we met in Mr. Tracy's room in the Hotel Roosevelt.

Q. Proceed. A. Some of us got there a little before the others; those in the taxi cab got there first.

Q. Who were the men that attended? A. All or practically all of the members of the general council of the New York Edison Company, Mr. Walter P. Ganley, Mr. Edward Matty, Peter or maybe it is Patrick, McGrath,

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Thomas Hart, Mr. Delia, Mr. Lazardia, Miss Callahan, and a number of others who were at the general meeting.

Q. Was Mr. Dudley Ward present? A. Yes.

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Q. And was Mr. Hinkley? A. Yes, he is the secretary.

Q. Was Mr. Galshot there? A. Yes.

Q. And Mr. Brennan? A. Yes.

Q. Mr. McCray? A. Wait, I do not think so, I am not sure that Mr. Brennan attended that meeting, but
701 I do know that Mr. McCray was there.

Q. Mr. Krukel? A. Yes.

Q. Mr. Shields? A. No.

Q. And Mr. Idebach there? A. Yes.

Q. Were those men from one company alone? A. Yes, they all represented and were all members of the general council of the New York Edison Company.

Q. All right. A. Yes.

Q. After you all got together in Mr. Tracy's room can you tell us what happened and who was the spokesman for that group, if any? A. We assumed Mr. Ganley, when I say, "We assumed", it is natural—it is a
702 natural conclusion that the chairman of any organization

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is the man that does the speaking for that organization.

We all went in and after a few minutes Mr. Ganley and the group that had gone up in the company car arrived. They sat down and talked to Mr. Coulter, who was the vice president of the I.B.E.W.

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In a few minutes Mr. Tracy came in the room with Mr. Beretz and was introduced to those who had not met

703

him as Mr. Tracy. Mr. Ganley made no attempt to ask any questions. I took it upon myself to ask some questions.

Q. What questions did you ask? A. I started off by asking Mr. Tracy if the voting power of 40,000 employees of the Consolidated Edison Company would only be in one Class B local of the I.B.E.W. The answer to that was that there would not be one local, that there would be seven locals for the members of the Edison Company, or the Consolidated Edison Company, in the I.B.E.W.

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Q. Have seven locals been set up? A. They have.

I then asked him if the International president had the right to suspend a charter or revoke the membership of any member of the organization for any reason whatsoever. He stated that the International president appeared to have that right but that he never exercised the right unless he deemed it necessary, and so forth. I insisted that according to the constitution of the I.B.E.W. he could, and he said yes, that he could.

I asked him if there was an agreement in existence between the Consolidated Edison Company and the I.B.E.W. and he said that there was.

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I asked him if we could see the agreement. He said no, that we could not. He said that we were not members of the I.B.E.W. I said that inasmuch as we were potential members of the I.B.E.W., and we were employees of the Consolidated Edison Company, and if we joined the I.B.E.W., that agreement would be binding upon us, that I thought we had the right to see that agreement. He said, "No," very definitely no, that on the day that the agreement is official and officially executed, or words to that effect, we will all gather around the table and read the agreement.

Q. Did you make any definite agreement as to whether or not that agreement had been executed at that time? A. No.

Q. Did he make any statement as to whether or not it was simply a proposed contract? A. No. He did not say that. He did say that it was an established contract; that they had a definite agreement.

Q. With the company? A. Yes.

Then I asked him the conditions of the agreement and what it meant and all of that and he said that that
707 agreement consisted of recognition of the I.B.E.W. by the management and the right to bargain for the 40,000 employees. I believe it was the same agreement that was shown me. I am not sure.

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Q. Did you ask any other specific questions? A. I did ask several questions that I cannot recall.

One question I started to ask Mr. Tracy,—I was very much interested in these linemen, I naturally was, I was their representative, I had the same type of work to do that they do and I started to ask Mr. Tracy the same
708 question I asked Mr. Beretz about working in the rain, and Mr. Ganley got all excited, and he did not know what I was going to ask, and he asked me to stop my questions, and he informed me that I was only invited there. I said to Mr. Tracy, "I represent a group of overhead linemen in the Consolidated Edison," and before I got any further Mr. Ganley said to me, he said, "Now," he said, "wait a minute, you are not a member of our group, you are here just because we invited you. You have nothing to say."

So, I asked him would he wait until I finished the question. I told him he had no idea what I was going to say, therefore, I had no right to ask any questions. I

said, "All right, I will put it in another way. I represent a group of men in the Consolidated Edison that are vitally interested in the matters that we have already outlined with regard to working in the rain and so forth." I asked Mr. Tracy if they will be taken care of in the agreement or what would be done about it and he reiterated the statement that Mr. Beretz had made, that they would take up where we left off.

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Q. Was that statement regarding your linemen? A. 710
It was.

Q. Was any statement made regarding the United Electric & Radio Workers, of the C.I.O.? A. Yes, by Mr. Tracy.

Q. To whom? A. To Mr. Ganley.

Q. What was it? A. He took Mr. Ganley to task for having read the letter at this meeting in the cafeteria from the president of the United Electrical & Radio Workers. He said it was not a public letter but had been sent to him and it was—that the letter that he had sent, that Mr. Tracy had sent to Mr. Ganley, it was all right to read that letter even though he understood that the letter would not be made public, but he did not think that he had the right to read the other letter; that he certainly did not intend to engage in any competition with any one, and he did not think that that was in his mind at all when he sent Mr. Ganley the letter, and in fact it was not in his mind, according to him. 711

Q. Was there any arrangement made with Mr. Tracy regarding the employee representation plan? A. Mr. Tracy reiterated what he had said in the letter that he

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sent to Mr. Ganley. He told him that he had made cer-

tain definite proposals to them, that they could move into in the way of organization affairs, in other words, they could come right in with their present set-up as a general council, and move right in with the I.B.E.W.; that perhaps they would have to elect an officer or two in each group but that essentially the set-up would be the same until at least the next December when the present employee representation plan would expire and new elections would be necessary.

He said that that offer would hold good only until the
713 following Monday. It was then Friday, and if they wanted to take it up they would have to act on it very soon.

Mr. McGrath, a member of the general council, jumped up and suggested right there and then on the spot that they ask Mr. Tracy for a charter, that he thought they represented enough employees of the Consolidated Edison Company to be able to ask for one right on the spot from Mr. Tracy, a charter in the I.B.E.W.

Mr. Tracy told him that he did not think it would be a good idea, then, for them to sign a petition there, and
714 he said that they would have to sign a petition in order to get a charter. He further said, then, it would not be a good idea to sign it in his room, but that they would adjourn the meeting and they would go off somewhere

else and sign it, and then they could send somebody back with the petition that day, that they could then consider, the I.B.E.W., they could then consider the granting of a charter.

So, there was a mad scramble to get out of his room and back to No. 4 Irving Place. We all arrived there and the petition was immediately started to be drawn up and

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Mr. Ganley and Miss Callahan, who, had been acting as general secretary of the council—

Q. Who was Miss Callahan? A. She represented a section of the com_ny, she represented the stenographic department of the Consolidated Edison Company on the general council. She was the secretary of the general council, not exactly, but she had been assigned by the management of the company to work in the office of the general council. She did all of their typing and the drafting of their stuff for mimeographing, and so forth.

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Q. Who drafted the petition? A. Miss Callahan and Mr. Ganley.

Q. What was the petition? A. I do not recall the exact wording of it. I do know that after the petition was drawn up, that—I believe there was 22 people signed that petition requesting that a charter be granted to this group representing the New York Edison Com-

pany or the Consolidated Edison Company.

Q. Did you sign? A. I did.

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Q. Was that petition addressed to Mr. Tracy asking for a local charter with the I.B.E.W.? A. Yes.

Q. Did the persons signing the petition represent the same persons who had attended the meeting with Mr. Tracy at the Hotel Roosevelt? A. Yes.

Q. Were there any persons in addition who signed the petition? A. I believe that there were one or two people that did not get an opportunity to go to Mr. Tracy's room in the Hotel Roosevelt, but who were present at the time the petition was being signed.

Q. Were you in favor of such a local charter being adopted? A. No.

Q. Why did you sign the petition? A. I took that point up with Mr. Ganley. As I had stated before we

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never affiliated with the general council, the former Bronx Gas & Electric Company general council of the Consolidated Companies never did affiliate with the general council of the other Consolidated Companies or of the New York Edison Company in particular for various

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reasons, that the employees did not take care for them, for their policies and did not care to enter in with or agree with the manner in which the other one or two
719 councils acted.

As spokesman for the group of employees I could naturally do nothing else but what they desired. I pointed out to Mr. Ganley that this was nothing more than a company union being promoted, that they could go over as a general council into the I.B.E.W. essentially as they were at the present time.

I asked him how I could fit into that general picture and he told me if I did not go in representing the employees of the former Bronx Gas & Electric Company, that he could certainly get somebody else to sign that charter representing them for me.

720 These people had elected me as their representative and I felt that the only thing I possibly could do was to sign the charter. I did mention to other people that I was signing it and I was going in it only as long as I thought it was a worthwhile thing, and when I thought it was not a worthwhile thing I was going to pull out and get out of it, and I did.

Judge Ransom: I move to strike out the witness' statement, as in no way binding upon the respondents.

Trial Examiner Gates: It may stand.

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Judge Ransom: Exception.

Q. (By Mr. Moscovitz) After the petition was signed, was it taken up to Mr. Tracy? A. Mr. Ganley took the petition up to Mr. Tracy at four o'clock.

Q. What happened? A. Mr. Ganley brought the petition back to Mr. Tracy at four o'clock that day, at or around four o'clock.

Q. Was that the time that it was given to him for the very first time? A. It was the very first time that Tracy had it.

722

Q. Was this an official action taken by the persons who signed the petition in an effort to secure a local charter, and the only such action? A. That was the real birth of that local on the I.B.E.W.

Q. Was there any person present at the meeting when the petition was signed who requested an opportunity to be heard on the C.I.O. question? A. Yes, definitely.

Q. Who? A. Mr. William Kennedy, organizer for the C.I.O.; United Electric and Radio Workers of America.

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He asked these people who were signing the petition as individuals, and collectively, and he spoke to me at the time and he asked them, in all fairness to the em-

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ployees he said in his opinion they ought to at least take one opportunity to play fair to the employees that they represented, inasmuch as they had gone up and spoken to Mr. Tracy and heard what he had to offer, that they should now go up to the national office and make an attempt to get in touch with these people at the national

office of the C.I.O. and he knew that they would be glad to explain to them just what the status of the employees would be if they went into the C.I.O.

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Q. Was anything done about it? A. Absolutely not.

Q. It was turned down? A. No, it was not turned down. No attention was paid to it.

Q. Was it then that you came in possession of these cards where you got persons to sign up with the
725 I.B.E.W.? A. No, I was pretty much fed up with the whole thing.

Q. Had you received these cards before you signed the petition? A. No, sir.

Q. Was it afterwards? A. That is right, I received these cards at a later date in Mr. Ganley's office.

Mr. Moscovitz: Mr. Examiner, Mr. Ransom has pointed out that he has a five o'clock appointment and I join with him in a request that we adjourn.

Trial Examiner Gates: There is one question
726 that I would like to have cleared up in today's record and that is approximately what date are we now in the story. There have been very few references to the date.

Mr. Moscovitz: As I mentioned, and as I understand from the witness' testimony, the date concerning which he has been testifying was April 23, 1937.

The Witness: That is right, Friday, April 23, 1937.

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Q. That is the time when the petition for the local charter was submitted to Mr. Tracy? A. Absolutely.

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Q. That is the time to which you refer and about which we are now talking, is that it? A. Yes sir.

(Witness temporarily excused.)

Trial Examiner Gates: We will recess until ten o'clock tomorrow morning.

Mr. Moscovitz: Will the Examiner ask the witnesses who are now here under subpoena to return here tomorrow morning?

Trial Examiner Gates: Those witnesses who are now in attendance here under subpoena will please return tomorrow at 10:00 o'clock A. M.

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(Whereupon the hearing adjourned at 4:45 P. M.)

ADJOURNMENT

729

730 S. M. 143

Minutes of Hearing, Held June 11, 1937

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated companies, BROOKLYN EDISON COMPANY, INC., 731 NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY, *Respondents*, and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION. 732	Case No. II-C-224

14 Vesey Street,
New York City, N. Y.,
June 11, 1937.

The above-entitled matter came on for hearing pursuant to adjournment taken June 10, 1937.

Before:

ROBERT M. GATES, Trial Examiner.

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National

Labor Relations Board.

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WILL MASLOW, Esq., Attorney for the National Labor Relations Board.

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers Local 1212.

Messrs. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall St., New York City, N. Y. (By William L. Ransom and Pincus M. Berkson), appearing for the respondent companies.

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PROCEEDINGS

Trial Examiner Gates: You may start, gentlemen.

HAROLD STRAUB, witness on the stand at time of adjournment, resumed, and continued his testimony as follows:

Direct Examination (Continued):

Q. (By Mr. Moscovitz) Yesterday, Mr. Straub, as I recalled, you testified about the birth of Local B-829. 735
Those were your words? A. Yes, sir.

Q. Will you go back a moment again to the Thursday meeting of April 22, 1937, and tell me whether or not you at that meeting made any specific protest to Colonel Stillwell? A. Not at that meeting, but at a meeting with Col. Stillwell, the afternoon, Thursday, April 22nd, I did protest the discrimination against the employees by the Consolidated Edison Company, through Col. Stillwell.

Q. Was there conversation on that point? A. Yes, there was. I called a man located in one of the plants and in the course of conversation with him he told me

736 *Harold Straub—For N.L.R.B.—Direct*

that I.B.E.W. pledge cards were being distributed by supervisors in that company and in that area for the men to sign. After hanging up the receiver and talking to him, I immediately called Colonel Stillwell's office and asked if I might speak to him, if I might go up and see him, and his secretary, Miss Meyers, told me I should come up, that he probably could grant me a few

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737 minutes. I went upstairs to his office and went in and was finally admitted to his office and he said to me, "Sit down, Straub. What is on your mind?"

I told him that I preferred to stand up, that before I was finished talking, I imagined he was going to have me thrown out, so he said, "No, I wouldn't think of doing anything like that. What is the trouble?" I said, "There is a bad smell up my nose and a sick feeling in the pit of my stomach."

He said, "There is a lot of us that feel that way these days. What is causing yours?"

I said that I resented the fact that the employees in the Consolidated Edison Company were being intimi-
738 dated and coerced into joining the I.B.E.W. and he asked me where that was going on, and in what department that was taking place, and I told him, and he reached over and took a pad that was laying on the desk and a pencil and started to write on it, and I assumed that at that time he was issuing an order that would stop the intimidation and coercion, at least in that department, but I found out later that he did not do that, because the intimidation and coercion continued, has continued and is continuing—

Judge Ransom: I move to strike out the witness's testimony as a conclusion. It is not anything he told the officer of the company. That is

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the petitioner's argument in this case, but it is not in the testimony. I want to strike out everything after the word "because."

Trial Examiner Gates: Please read that part of the answer.

(That portion of the answer read.)

Trial Examiner Gates: It may be stricken.

Judge Ransom: What is the ruling? 740

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) After Col. Stillwell made notes of your conversation, did you leave? A. Almost immediately. There was a few words further.

Q. Can you tell me whether or not there was, to your knowledge, a cessation of activity within the company of the practice which you had protested to Col. Stillwell?

Judge Ransom: Objected to on the ground that the witness has not undertaken and could not undertake to speak with respect to the entire company. The witness's testimony related to one department which he has not yet named. 741

Trial Examiner Gates: He may answer, so far as his knowledge goes, indicating the sources of his knowledge.

Judge Ransom: Exception.

A. The particular department to which I refer is known as the Overhead Construction Department. This activity with regard to that department has not ceased or did

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not cease.

Q. (By Mr. Moscovitz) Why do you say that? A. Because up until as late as yesterday employees were

being informed of I.B.E.W. meetings that were taking place, this meeting; were being informed by their foremen and told to attend that meeting, to be sure that they attend that meeting.

Q. Who were the foremen? A. I received my knowledge from a man who worked as a clerk in the office at 155 Purdy Street. He told me that the—

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743 Judge Ransom: (interposing) Just a moment, I object to that as purely hearsay. I move to strike out the answer as far as given, on the ground it is wholly incompetent and not in any way evidence against any of the respondents.

Trial Examiner Gates: You may continue, indicating the name.

Judge Ransom: Exception.

A. The name was Huber. He told me that Mr. Gregson, assistant to Mr. E. E. Hill who, in turn, is assistant superintendent of the overhead and underground transmission construction and distribution departments of the Consolidated Edison Company.

744 This Mr. Gregson had called up and told him, in turn, to tell the different foremen to be sure to attend the meeting that is to be held tonight at Tremont & Third Ave. in the Bronx, and also informed me that Mr. Ganley, the president of Local B-829 would attend the meeting and address these people.

Judge Ransom: I move to strike out the answer as wholly incompetent and in no way related to any of the respondents.

Trial Examiner Gates: Read the answer.

(Answer read.)

Trial Examiner Gates: It may stand.

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Judge Ransom: Exception.

Q. (By Mr. Moscovitz) After Local B-829 came into existence, did you become active in the affairs of the I.B.E.W.? A. Not immediately. On that Friday, after seeing—

Q. (interposing) When you say "that Friday," you refer to April 23, 1937? A. That is right.

Q. Yes. A. The week-end, in between the next succeeding working days, I gave serious thought and consideration over the week-end. I decided I would go back to my job as a lineman and indulge in as little activities as I possibly could. I did that. I went back to work the following Monday morning and reported out on the line-gang, and worked as a lineman that day and the following day.

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Tuesday, May 4th, at 4:20 o'clock p. m., the foreman, a foreman of the gang, Mr. George Saltzman, in making his periodical call to Mr. Edward Haywood at 41st Street, came back, after making his call, and told me that there was a meeting being called that night by Mr. Ganley in room No. 1237 at the company premises, No. 4 Irving Place and that I was to attend that meeting.

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Q. Was that a meeeing of the I.B.E.W.? It was.

Q. What local? A. Local B-829.

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Q. Yes. A. Yes.

Q. Did you tell him that you would attend, or did he tell you that you were to attend? A. What was that?

Q. Did he tell you that you were to attend? A. He told me that I was to attend that meeting, that he was to notify me that there was a meeting to be held and that I was to attend the meeting and also he added that the

meeting was called for five o'clock, and he also laughed, when he commented upon the fact that I was notified at 20 minutes after four of a meeting that was to be held at five o'clock that same day.

Q. What was the name of this man, again? A. George Saltzman.

Q. What is his position? A. Lineman-foreman, in charge of a gang, a truck of linemen of the overhead construction department.

Q. Who was it, you say, that he told you had in-
749 formed him? A. Mr. Edward Haywood, the man that we had; that the foreman had to call periodically.

Q. What was Mr. Edward Haywood's position? A. His title is that of office assistant, first grade. He works for Mr. E. E. Hill in the office of the overhead construc-

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tion department.

Q. Is he an assistant to Mr. E. E. Hill? A. He is in that office.

Q. What is Mr. E. E. Hill's job? A. Mr. E. E. Hill is the assistant general superintendent of the overhead
750 and underground transmission construction and distribution departments of the Consolidated Edison Company.

Q. At this time, were you a member of the C.I.O.? A. No.

Q. Did you attend the meeting? A. I did.

Q. Were representatives of the management in attendance? A. No.

Q. Were there any foremen or other supervisory employees in attendance? A. No.

Q. How many people attended, do you know? A. All of the people that had signed the charter, the petition for the charter, rather, and presented the same to Mr. Tracy.

Q. Were there other employees in addition to those in attendance? A. No. There were only the charter members; only the people that had signed this charter.

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Q. Were these people that had signed the charter and had attended that meeting at this time officers of the new local? A. In accordance with the agreement that they had with Mr. Tracy, the International president of the International Brotherhood of Electrical Workers— 752

Judge Ransom (interposing) Just one moment. I move to strike out the witness's conclusion, "in accordance with the agreement that they had with Mr. Tracy, the International president of the International Brotherhood of Electrical Workers," as wholly incompetent, as a method of proving any such matters. In any event, it is in no way related to or binding on the respondents herein.

Trial Examiner Gates: Read the answer of the witness, so far as given.

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(Answer read.)

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Answer the question. A. In accordance with the agreement that they had with Mr. Tracy, the International president of the International Brotherhood of Electrical Workers, the officers in the former general council of the New York Edison Company continued to hold their office after the company union was abolished and they picked up and received

S. M. 154

a charter from the International Brotherhood of Electrical Workers.

Q. So that the persons who signed the petition and who had previously to that held official positions with the employee representation plan became officers of the new local? A. All of the officers in the old general council did become officers in the International Brotherhood of Electrical Workers with the difference that some of their positions were changed.

755 Q. When you say in the International Brotherhood of Electrical Workers, do you refer to Local No. B-829? A. Yes, Local B-829.

Q. For instance, Mr. William B. Ganley, who was chairman of the general council, was he—let me put it this way—what position did he hold with Local B-829 of the International Brotherhood of Electrical Workers? A. He is now president of Local No. B-829 of the International Brotherhood of Electrical Workers.

Q. Edward Maddie, who was vice-chairman of the general council, what is his present position? A. He is now vice-president.

756 Q. C. Hinckley, former secretary of the general council, what is his position with the local? A. He is now the financial secretary of Local B-829.

Q. And you made reference to the fact that a Miss Callahan, E. Callahan, was assistant to Mr. Hinckley

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in the general council. What is her position with the local? A. She is now the recording secretary for Local B-829.

Q. Patrick McGrath, who was formerly chairman of the department council,—what is his position with the local? A. He is business manager for Local B-829.

Q. Mr. Brennan, who was chairman of the department council, what is his position now in the local? A. He is now the treasurer of Local B-829.

Q. And Mr. Galschodt, who was chairman of the department council, what is his position now with the local? A. He is an executive board member, of Local B-829.

Q. And Mr. Lazzardi, who held the position of chairman of the department council, what is his position now with the local? A. He is a member of the executive board of Local B-829. 758

Q. Is the same true of Mr. Eidelbach, Mr. Hart and Mr. Delvac, Mr. Flannigan, and Mr. Johnson? A. It is.

Q. Was there any person who attended the meeting where the petition was signed, requesting affiliation with the I.B.E.W., who did not sign the petition? A. Will you repeat the question, please.

(Question read.)

A. The petition was signed, not at a meeting, but rather in a gathering after the meeting with Mr. Tracy, in the

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759

office of Mr. Ganley, in room 1237 in the Fourteenth Street Building of the company.

There were people there present that objected to the signing of the petition. They did not sign the petition.

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Q. Were they persons who held official positions with the general council? A. They were.

Q. Did any of the persons who objected to the signing of the petition become members of the official body of the New Local? A. They did not.

760 Q. How long did you continue in your membership with the I.B.E.W.? A. Until the following week, I don't recall the exact date.

Q. What month would that run you into? A. May.

Q. The middle part of May? A. About the 2nd week of May.

Q. Did you engage in any activity for the I.B.E.W. during the period immediately preceding your becoming a member of the C.I.O.? A. I did.

Q. What was that activity? A. The activity was
761 more or less compulsory.

Judge Ransom: Move to strike out the answer as wholly incompetent, highly argumentative. If the witness wishes to argue for the C.I.O., he should do that on the floor and not on the stand.

Trial Examiner Gates: It may be stricken.

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Q. (By Mr. Moscovitz) Tell us what your activities were during the period immediately preceding your becoming a member of the C.I.O.? A. I attempted to, and
762 did, locate the cards that had been signed by the members of the line department for the overhead construction department in the Bronx, due to the fact that a man by the name of Mr. Flannagan was sent up to see me on the job where I was working, by Mr. Ganley.

Q. Who is Mr. Flanagan? A. Our member of the executive board of Local B-829, a member of the general council.

Q. What is his job? A. He works in the service and records, or plant and inspection department. I don't know exactly where.

Q. Is he a supervisory employee or a regular worker? A. I believe he is a regular worker.

763

Q. And before he became a member of the official family of the I.B.E.W. local, did he spend all of his time as did you, on employee representation plan work? A. No.

Q. He did not? A. Part of his time.

Q. Part of his time? A. Yes.

Q. All right. Now, tell us further what took place.

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A. Mr. Flanagan came up to see me, came out on the job where I was working as a lineman and called me aside and talked to me and wanted to know why these people that had signed the cards, why I had not collected their initation fees of $1.50 each. He had with him a set of receipt books from Local B-829 of the I.B.E.W. and we had quite a talk and I told him that I didn't know where these cards were, that I had never seen the cards, they had been signed by the employees for a supervisor of the company, and I had no way of knowing even where the cards were, and he suggested that I try and find out where the cards were, and I did.

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Q. What did you find? A. I found that these cards had been sent to Mr. Edward Haywood in 41st Street and from there had been forwarded to Mr. Ganley who had then taken up his office at 60 East 42nd Street. I went up to see Mr. Ganley and—

Q. Did you say 60 East 40—what street? A. 2nd Street.

Mr. Ransom: Just a moment. I move to strike out the entire conversation with Mr. Flanagan and —as in no way related to or binding upon the respondents, wholly outside any issue brought by the complaint and charge.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

766 *Harold Straub—For N.L.R.B.—Direct*

Q. (By Mr. Moscovitz) What were those offices? A.

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They were and are now the office of Local B-829 of the International Brotherhood of Electrical Workers. They are located in 60 East 42nd Street, in the Lincoln Building, room 934.

Q. Do you know at that time whether Mr. Ganley was still employed by the Edison Company? A. I don't know.

767 Q. Go on. A. I went in to see Mr. Ganley in his office and he greeted me with the words that he had heard some bad news about me; that he had heard that I was going around trying to sell the people the C.I.O. instead of the I.B.E.W. and I told him that in the location in which I worked there were many members at that time in the C.I.O. and that I could not find anything that I could argue with them about against the C.I.O. and he said to me, "Well, you want to remember that you are in the I.B.E.W. and that you are affiliated with the American Federation of Labor, and forget all about the C.I.O."

768 He said, "We have 6,000 paid members, 6,000 members, and 6,000 paid members, and the rest of them are going to get into the I.B.E.W. whether they like it or not."

After a little further discussion I asked him whether these cards were that the people had signed up in the Bronx and he brought me ont and showed me his files, the files where these cards were located, and told me to take them out, that they had not had time to file them

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in alphabetical order; that they were just thrown in there and that I should take them out and pick out the

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names of the men whom I represented in the Bronx, that I should take these cards back to the Bronx and contact these men and collect off them the necessary $1.50 for each card as an initiation fee into the I.B.E.W. I went through those files and I did take those cards. In addition to that, the then financial secretary of the council, Mr. Charles Hinkley, called me into his office which adjoined Mr. Ganley's office and showed me a group of cards that had been mailed to him, that had been signed by girls, girl employees, in the office of 43 Westchester Square. He asked me if I knew any of those people and 770
if I would take those cards up there and collect the money from those people. I said that while I did not know the people, I knew of them, I knew where they were located and I would take the cards up, and I did.

I took the cards that day, I made no attempt whatsoever that day to collect the money.

Judge Ransom: I move to strike out the narrative of the conversation with the president and secretary of this local union at his office in 42nd Street and between these officers of the Local and this witness. Strike it out as wholly incompetent, and in no way related to any issues 771
under the complaint and as in no way either binding or relevant to or related to any of the respondents.

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Trial Examiner Bates: It may stand.

Judge Ransom: Exception.

A. The following morning—

Q. (By Mr. Moscovitz) What would that date be? A. I am not exactly sure of the date. I think that was—

Trial Examiner Gates: Would a calendar help you?

The Witness: No, but that card that you showed me yesterday would.

Q. (By Mr. Moscovitz) You mean the application cards? A. That's right. The exact date was May 11th, the date I was in Mr. Ganley's office.

Q. Do you know whether or not Mr. Ganley is still employed by the company? A. I do not, no.

773 Q. When was the last time that you knew he was employed by the company?

Judge Ransom: Objected to as wholly incompetent. The witness could not know. The most that he could possibly know would be what Mr. Ganley told him.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. At the meeting that I attended of Local B-829, at 60 East 42nd Street, at which they elected their officers, I was told at that meeting that Mr. Ganley was then on

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his vacation from the company; that he had received his vacation pay and was on his vacation. They were negotiating for leave of absence for Mr. Ganley at that time, but it had not yet been granted.

Judge Ransom: Would you fix that date as to that meeting for the election of officers?

The Witness: That meeting was held, I can't recall the exact date, it was approximately the 9th or 10th of May.

Q. (By Mr. Moscovitz) Who told you this? A. Mr. Ganley himself and the secretary of the council, the recording secretary, Miss Callahan.

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Q. That is a meeting about which you have not yet testified? A. That's right.

Q. Before you tell us what you did about these application cards for the I.B.E.W., will you, for a moment, go back to the meeting of May 4th which you started to testify about before when I interrupted you. That was the meeting of Tuesday, May 4th. A. That meeting was called specifically by Mr. Ganley for the purpose of drawing up a list of questions to present to Mr. Tracy, to find out just what latitude they had, just what they could do, how much of the initiation fee they were collecting from the employees were to be assigned to them; who would pay their expenses, the expenses that they were incurring; whether they would be paid by the International Brotherhood of Electrical Workers, or who

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would pay them. Another question that they drew up and asked Mr. Tracy, and subsequently received an answer to, and, incidentally, these lists of questions were drawn up and typed by the secretary of Local B-829, and given to the members to see the answers.

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Q. Where was this meeting held? A. Room 1237 at No. 4 Irving Place.

Q. Was it after five P.M.? A. Yes.

Q. Was it also in the Board of Director's room? A. No, that was in the office assigned to Mr. Ganley at No. 4 Irving Place.

Q. His regular office? A. That's right.

Q. Were those in attendance the persons whom you have already listed as being the new official family of the new Local? A. At that time they had not served or had not been elected as the new officers of Local B-829, although Mr. Ganley had received a charter from Local B-829 and the meeting was being held under the auspices

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of Local B-829. Mr. Ganley was acting then as the president of Local B-829. There was never an election to elect him president. He just went over from chairman of the general council to president of the Local B-829.

Judge Ransom: I move to strike out the last sentence of the witness' answer as a conclusion.

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Trial Examiner Gates: It may stand.

779 Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Was there ever a meeting for the election of the other officers of the Local, in so far as you know? A. Yes, that meeting was held at a later date, the meeting which I had gone into before.

Q. Yes, but at that time the officers had not been elected but were acting without the vote of the membership? A. That's right.

Judge Ransom: I move to strike out the answer as incompetent, calling for a conclusion, not a proper method of proof.

Trial Examiner Gates: It may stand.

780 Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What were the questions which were drafted to Mr. Tracy at that meeting? A. I cannot recall all of the questions, although I do recall their number. There were 13 questions drafted. I recall some of the questions and some of the answers. I cannot recall them all.

Q. Were the questions which went to the working conditions which would be in effect in the various companies under the I.B.E.W. proposed agreement? A. Absolutely not.

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Q. Were they questions which were submitted by the membership for the purpose of determining what work would do for the employees? A. Absolutely not.

Q. What were the questions then directed to? A. The questions were directed to Mr. Tracy and asked him various questions such as I have stated, how much money of the $1.50 initiation fee would be assigned to the Local union; who would pay their expenses; or the expenses that they were incurring in organizing the 782
Edison Company employees, and I believe the answer to that was that there would be no pay from the International Union, that that would have to be taken up later by the Local itself.

Another one of the questions they asked Mr. Tracy was whether they would need, in the event that they would need a 51 per cent majority of the employees of the company, could they consider the application cards that had been signed by employees but which no money had been collected on—could they consider those people as members of the I.B.E.W.

Q. Did Mr. Tracy answer that question? A. He did. His answer was that they did not need 51 per cent as 783
they already had recognition from the management.

Q. And at this meeting were any proposals made regarding the collection of initiation fees? A. Yes.

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Q. By whom? A. A Mr. Brennan.

Q. Is that the treasurer of the Local? A. That's right.

Q. What was the proposal?

Judge Ransom: Objected to as wholly incompetent, in no way related to or binding upon the

784 *Harold Straub—For N.L.R.B.—Direct*

respondents, what may have taken place in a meeting of a local organization of employees, in no way binding.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

A. The statement that Mr. Brennan made was due to the fact that there was much discussion as to just how they would go about compelling the employees that had signed these cards to pay their $1.50 initiation fee, Mr.
785 Brennan suggested that they form a committee from among these charter members, these former members of the general council, and contact the management of the company, and ask them to strike from the pending list of raise increases the names of those people who had not paid their $1.50 initiation fee into the I.B.E.W., into Local B-829 of the I.B.E.W.

Q. And what was done in regard to that proposal, do you know? A. There were very many very pretty speeches made about it. I objected very vigorously to it. A Mr. McGrath—I objected to it on the ground that

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these people were there by virtue of the fact that they were originally elected as employee representatives in a company union and that they should remember that they would not be there unless they had been elected by the employees, and they were there to represent all of the employees, whether they were in the I.B.E.W. or not.

Mr. McGrath, present business manager, got up and reminded me that the employee representation plan was now dead and, therefore, they didn't have to remember any of the agreements that had been made by them as members of the employee representation association. I informed Mr. McGrath and everybody else present that

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besides the employee Representation Plan having died, that their consciences had died with it.

Mr. Hinkley got up and made a very pretty speech saying that this was war, and that in war everything was fair, and that there was no reason why they should not use any means at their disposal to compel the people that had signed the I.B.E.W. cards into paying the $1.50 initiation fee.

I continued to object and pointed out that most of the people that had signed these cards had been black-jacked into signing them, that they did not want to sign them to begin with. There was much more discussion pro and con and finally the idea was dropped.

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Judge Ransom: I move to strike out the answer as highly incompetent and improper, as not evidence of any of the things which the witness undertakes to represent himself as saying in a meeting of the Local Union, in no way relating to or binding on the respondents.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

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Q. Was it after that meeting that Mr. Flannigan came to see you about your failure to collect the initiation fees? A. It was.

Q. That was the testimony that you were giving immediately before I asked you to go back and describe the May 4 meeting? A. Yes, it was.

Q. You testified that these cards were turned over to you? A. I was directed to the files by Mr. Ganley and he instructed me to take these cards and bring them up to the Bronx, and attempt to collect, and to collect for them the fees if possible of $1.50 initiation fees of these people.

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Q. Did you agree to do that? A. I took the cards. I did not agree to make the collections.

Q. What was the arrangement between yourself and Mr. Ganley concerning the collection of dues? A. There was no definite arrangement, Mr. Ganley instructed me to collect the dues and I did not agree with Mr. Ganley

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that I would collect them. I did take the cards as he instructed me to do, and I later went out and attempted
791 to collect some of the money on these cards.

Q. When did you attempt to do that? A. The following day.

Q. When was that? A. May 12, 1937.

Q. Was this during your regular working hours? A. It was.

Q. Was it on company property? A. It was.

Q. Did you secure permission to do this? A. I had objected from the time the International Brotherhood of Electrical Workers was recognized, about these cards—it was common knowledge throughout the system that the heads of Bureaus and heads of departments and the gen-
792 eral council members were collecting this money, and I consistently and constantly refused to become—

Judge Ransom: I move to strike out the witness' last statement as argumentative as to what was common knowledge.

Trial Examiner Gates: I think it would be well for you to answer the question which was, "Did you secure permission to do this?"

The Witness: I did.

Trial Examiner Gates: The previous answer may stand.

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Judge Ransom: Exception.

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Q. (By Mr. Moscovitz) From whom? A. From P. G. Elliott, electrical engineer, in charge of the former Bronx Gas and Electric Company division under which we were employed.

Q. He was a supervisory employee? A. Oh, yes.

Q. How many men were under him? A. In charge of the overhead construction department of the Bronx, was his particular field.

Q. And that brought under his jurisdiction approximately how many men? A. All of the linemen, the helpers and the chauffeurs in the Bronx.

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Q. I see. A. Yes.

Q. When and where did you secure this permission from him? A. I had asked him on several different occasions, telling him that I would not collect any money for the International Brotherhood of Electrical Workers unless I received permission to do it.

I went in and saw him that morning and asked him if he, in turn, had received permission from or had spoken to anyone at 41st Street, any of his supervisors and gotten their permission to have me collect the

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money, and he said, "Go ahead and do it, everybody else is doing it", and I did, and Mr. Flannigan accompanied me.

Q. Did you collect any dues? A. I did.

Q. From whom? A. Miss Mildred Sodergren.

Q. Where is she employed? A. 43 Westchester Square, Bronx, New York.

Q. What was that? A. Formerly the commercial division office of the Gas Company.

Q. In what capacity is she employed? A. Secretary to Mr. Peterson.

Q. Who is he? A. Former general manager in the

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Bronx. He has the same position with the Consolidated Electric Company.

Q. Today? A. Today.

Q. Did you go into her office to collect the dues? A. Yes.

Q. What took place? A. She had signed this card. I had the card. Prior to that I had contacted all of the girls that had signed these cards—they had mailed these cards down to the office at 60 East 42nd Street and they had refused to pay the $1.50 initiation fee
797 later on.

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They gave various arguments why they did not want to pay it. I went in to see this girl accompanied by Mr. Flannigan and told her that she had signed the card and asked her if she would care to pay the $1.50 initiation fee. She said she would and she paid me the $1.50 fee.

I gave her a receipt from the regular receipt form book of the International Brotherhood of Electrical Workers, and she paid that at three o'clock in the after-
798 noon on the premises at No. 43 Westchester Square in the Bronx.

Q. Did you do this collection work openly, or did you do it secretly so that nobody would see you?

Judge Ransom: I object as highly incompetent, calling for a conclusion, no probative value, and in no way relating to or binding upon the respondents. I submit that this is just an adjective of an argument and not a factual statement.

Trial Examiner Gates: Overruled.

Judge Ransom: Exception.

A. Quite openly.

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Q. (By Moscovitz) When you say "quite openly," what do you mean? A. I mean exactly "quite openly", nothing secret at all about it, everyone in the company knew what I was doing, everybody in the department that I worked in knew what I was doing.

Q. Were there other employees in location with this

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young lady? A. The principal office that she is working in, that particular office in which she was formerly in was the former bookkeeping department of the Bronx Gas and Electric Company. Due to alterations that they are making on the building, the office of Mr. Peterson was moved down into this location. She is the only one located in that particular area.

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Q. Did you, after collecting this money from her, go into the other office and attempt to collect any dues from any persons? A. Oh, I did that before and after collecting the money from her.

Q. Did you collect the dues from any other person? A. I did not.

Q. Did you make an effort to? A. I did.

Q. Why did you not collect the dues? A. They refused to pay it.

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Q. What did you do about that? A. I did not do anything about it. I thought they were doing a swell job.

Q. In not paying you? A. That is right.

Q. Was Mr. Flannigan with you at this time? A. He was.

Q. Did you go elsewhere in an effort to collect dues?

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A. No sir.

Q. Were there any other gentlemen with you out-

side of Mr. Flannigan while you collected these dues? A. No.

Q. Do you know whether or not other persons were on that day, making the rounds in an effort to collect dues? A. No, not on that particular day, no.

Q. What did you do with the money that you collected from this young lady? A. I turned it over to Mr. Flannigan who had the receipt book then which the receipt came out of, which we used and which she received, a receipt for the $1.50.

803 Q. How many other cards did you have with you at that time that you were collecting on? A. The cards of all the linemen that had signed the I.B.E.W. that is all of the linemen that were formerly with the Bronx Gas & Electric Company plus the cards of these girls in the office at 43 Westchester Square.

Q. May I see the card that this young lady signed? A. Yes. Here it is.

(Witness shows counsel the card.)

Q. Is that her signature? Do you know? A. It is her signature.

804 Q. Whose signature is that next to hers? A. That is one of the other girls in the office. This is a card—

this original card that she signed and was sent down to 60 East 42nd Street. At the time that this $1.50 was paid, she made out another card. Of course, I gave her a blank card and she made the card out, typed it, and signed it. It was not supposed to be legal unless a member of the I.B.E.W. signed it and since the girl who had signed it originally was not a member of the I.B.E.W., therefore, I was requested to and I requested her to make out another card which she did.

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Q. What is the name on here? A. (Inspecting the card for several moments) I cannot very well make it out.

Q. Then you say this is typical of the—this is, you say, the original card? A. This is the original card.

Q. The same as all the other cards that have been signed by persons who have become members of the I.B.E.W. of the system? A. No, there is a difference in the cards.

Q. Is the difference dependent upon the type of membership? A. No, the difference is dependent upon 806
the fact that this is only one half of the pledge card of the I.B.E.W., which comes in another portion. These people were joining the I.B.E.W. so fast and furious that they ran out of these application cards and they decided to tear them in half and distribute

them around until they could get them all signed up and then they would come back later and sign them up on the full card. When I say "them", I mean the former members of the general council.

Q. This is the kind of a card that you circulated? A. 807
Yes, this is the kind of a card they signed originally. I had in my possession at that time blank cards. These people were filling out these cards as I brought them around. They were supposed to. This is the only person that did fill one out in fact.

Q. What was the other half supposed to represent, a receipt? A. No, they were divided into two sections. I have one, I brought with me this morning, about 150 of those cards that I received from the secretary, Mr. Hinkley, in his office.

Q. Is this one of them? A. Yes.

Q. Is this a full card? A. That is it.

808 Mr. Moscovitz: Will this be marked for identification?

Trial Examiner Gates: It may be so marked.

(Document referred to marked Board's exhibit No. 6 for identification, Witness Straub.)

Q. (By Mr. Moscovitz) I show you Board's exhibit No. 6 marked for identification and ask you whether

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809 or not this is the full card that was issued for application? A. It is.

Mr. Moscovitz: I ask that this be marked for identification.

(Document referred to marked Board's Exhibit No. 7 for Identification, Witness Straub.)

Q. (By Mr. Moscovitz) I now show you Board's Exhibit No. 7 for Identification and ask you if this is the original card signed by Miss Mildred Sodergren? A. It is.

810 Q. Board's Exhibit No. 7 for Identification was then the top part of it, was it, of Board's Exhibit No. 6 marked for Identification? A. I beg your pardon sir, I was looking at this.

Q. Would you say that Board's Exhibit No. 7 for Identification was just the top part of the full card which has been marked as Board's Exhibit No. 6 for Identification? A. Well, it would depend entirely upon the way you read the card. If you turn it around one section is on top. If you turn it around the other way, the other section is on top.

Q. Both sections are comparable; is that correct? A. Yes, sir.

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Mr. Moscovitz: I offer in evidence Board's Exhibit No. 6 marked for Identification.

Mr. Ransom: Objected to as unrelated to any

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issue in this case; in no way binding on these respondents.

Trial Examiner Gates: It will be admitted.

Judge Ransom: Exception.

(Document referred to marked Board's Ex- 812
hibit No. 6 for Identification received in evidence, Witness Straub.)

Mr. Moscovitz: I offer in evidence Board's Exhibit No. 7 for Identification.

Judge Ransom: Same objection.

Trial Examiner Gates: It will be admitted.

Judge Ransom: Exception.

(Document referred to marked Board's Exhibit No. 7 for Identification received in evidence, Witness Straub.)

Q. (By Mr. Moscovitz) Were these other cards 813
which you showed me yesterday, and which I now hand you, signed by Cornelius Blackledge, Joseph W. Lammetz, Henry R. Lange and Luther O. Grove. Were these cards, cards which you also secured to obtain the fees on? A. Yes, but I did not secure the payment of fees except on the one; the only one that I secured any fees on was the one card of Miss Mildred Sodergren.

Q. Did you secure the signatures to these cards? A. I received these cards with the signatures already affixed to them. They had been secured by somebody else.

Q. What was your reason for taking out these particular four or five cards out of this batch?

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Q. There was no particular reason. These are people that joined the C.I.O. subsequent to signing these cards; people that objected to the—or from the start from signing their cards and people that were told if they did not sign them they would be out in the cold.

Judge Ransom: I move to strike out the statement as incompetent, unidentified, not related to the respondents.

815 If this is the sort of thing that is going to be accepted as testimony in a quasi judicial proceeding, I wish to reserve my rights as to it.

Trial Examiner Gates: Did they tell you that?

The Witness: Sir?

Trial Examiner Gates: Did they tell you that?

The Witness: Yes.

Judge Ransom: I object to that question because that is almost as indefinite as the question that the Board's counsel asked him. I move to strike out the answer.

Trial Examiner Gates: It may stand.

816 Judge Ransom: Exception taken in both instances.

Q. (By Mr. Moscovitz) Are the four persons whose names appear on the cards that we have just referred to persons still employed by the company? A. They are.

Q. What company? A. Consolidated Edison Company of New York.

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Q. Are they linemen? A. Not all of them.

Q. Is Luther O. Grove a lineman? A. That is right.

Q. Is Mr. Henry R. Lange a lineman? A. That is right.

Q. Is Mr. Lammetz an installer? A. He is entitled "Installer" but he is actually a company chauffeur.

Q. And is Mr. Cornelius Blackledge a lineman? A. That is right.

Q. After this day in which you collected one payment from this young lady whose card has been introduced, you testified that you secured no other payments of these fees? Is that right? A. That is right.

Q. Did you continue elsewhere in an effort to secure payments? A. No sir, I did not.

Q. Did you take further efforts after that, or did you 818
after that do any work at all for the I.B.E.W.? A. I did not.

Q. Was that the last active step that you took under the I.B.E.W.? A. That is right.

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Q. Were you at that time a member of the C.I.O.? A. No.

Q. Before you did become a member of the C.I.O. and after the day when you collected this $1.50, did you attend any other meetings of the I.B.E.W.? A. The day that I collected the $1.50. 819

Q. After you collected the $1.50? A. After I collected the $1.50 I attended no other meetings of the I.B.E.W.

Q. Did you before you collected the $1.50 attend any meetings of the I.B.E.W. about which you have not yet testified? A. I attended a meeting at 60 East 42nd Street, at which were officers elected of Local B-829.

Q. When was that? A. I do not recall the exact date of the meeting.

Q. Do you recall how many days before the collection of the $1.50? A. It was not very many days. It was in the same week I believe. I cannot be accurate on that.

820 *Harold Straub—For N.L.R.B.—Direct*

Q. Were all of the persons in attendance who signed the original petition? A. For the charter?

Q. Yes. A. Yes.

Q. Were there any other persons there? A. No.

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Q. Were any of the International Officers of the International Brotherhood there? A. No.

Q. Were officers elected at that time? A. They were for the local B-829.

821 Q. Yes. A. Yes.

Q. Were the persons elected at that time, elected to the offices which you have already described? A. They were.

Q. The same persons that you have already described? A. They were.

Q. The persons who had formerly held official positions with the E.R.P.? A. That is right.

Q. Were you elected to any office? A. I was offered an office and I refused it.

Q. What office were you offered? A. I was offered the office of member of the executive board, and the man

822 that is now the office manager of Local B-829 told me that if I desired to I could become the chairman of executive board. I was nominated for the executive board and I declined the nomination.

Q. What was the reason for your declination?

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Judge Ransom: I object to that as incompetent, immaterial and in no way binding upon or related to the respondents.

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.

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A. I had come to the conclusion that if the I.B.E.W. or any other organization could do the employees of the Consolidated Edison Company any good, the people that were in there, acting in their official capacity and intended to act in an official capacity as officers of the I.B.E.W. certainly were not the people to do the employees any good and I was thoroughly disgusted with the whole affair.

Judge Ransom: I move to strike out the answer as undoubtedly argumentative and improper.

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Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Did that end your affiliation with the I.B.E.W.; is that right? A. Yes sir.

Q. How many days elapsed between your becoming a member of the C.I.O. and that event? A. About two days.

Judge Ransom: Can you fix the date?

Mr. Moscovitz: Will you fix the date of your membership in the C.I.O. Perhaps, if you will look at the calendar that the Examiner is showing

S. M. 185

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you, it will help you to fix that date.

A. When I said two days I was wrong—no, I was right, I joined the C.I.O. on Friday evening, May 14, 1937.

Judge Ransom: Is that the date of your application for membership?

The Witness: That is right.

Judge Ransom: You had done nothing about it before then?

The Witness: To join the C.I.O.?

Judge Ransom: Yes.

826 *Harold Straub—For N.L.R.B.—Direct*

The Witness: I had given it very serions consideration but had not actually paid any money or became a member.

Q. (By Mr. Moscovitz) Are you an officer of the C.I.O.? A. I am not.

S. M. 186

Q. When you say that you became a member of the C.I.O., you mean the United Electrical & Radio Workers
827 of America, an organization which is an affiliate of the C.I.O.? A. Yes.

Q. Is there any local of that organization to which you belong? A. Yes, Local No. 1212.

Q. 1212? A. 1212.

Q. Are you still a member? A. Of it?

Q. Of the local? A. That is right.

Q. You have severed all connections with any other labor organization? A. I have. I have refused to attend meetings that I have been notified were being held.

Q. Did you, before becoming a member of the C.I.O., secure a copy of the constitution and by-laws of the I.B.E.W.? A. Yes, sir.

828 Q. From whom? A. Mr. Charles Hinckley, whose office is at 60 East 42nd Street, the day I went down there to get the cards of the men that had signed.

Q. Was this during your regular working hours?

S. M. 187

A. It was.

Q. While you were pursuing the same practice that you had pursued while you were an officer of the employee representation plan? A. Yes.

Q. Is this the constitution that Mr. Hinckley gave you? (Handing to the witness a document.) A. This is one of the several that he gave me.

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Q. They are all the same? A. Yes, sir.

Q. This constitution is in existence today? A. I believe it is in existence today.

Q. It was in existence at the time it was given to you? A. Yes.

Judge Ransom: Can you fix the date when you got it?

The Witness: May 12th was the day that I collected the $1.50—I cannot exactly fix it, but I am sure, or almost positive that it was Tuesday of that same week.

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Q. (By Mr. Moscovitz) Was it the day you got the cards? A. What is that?

Q. Was it the day you got the cards? A. The day that I got the constitutions?

Q. Did you get the constitution the day you got the cards at the office of the local union? A. No, sir—I beg your pardon, that is right. I got the cards the same day.

S. M. 188

Q. That was the day that you went back to 43 Westchester Square and collected this $1.50 from Miss Mildred Sodergren? A. No.

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Q. Not that day? A. No, oh, no.

Mr. Moscovitz: I think we had better fix the periods again and get them straight.

Judge Ransom: I think it would be advisable.

Q. (By Mr. Moscovitz) Mr. Witness, I think it would be well for you to fix the periods so that we may have them accurately in the record. A. I went down and went to the office at—the office of Local B-829 at 60 East 42nd St. and went out the following afternoon to 43 Westchester Square to collect the money. I did not

get the cards and the constitution on the same day that I collected the $1.50.

Judge Ransom: If you can fix the time there a little more closely I think it would help.

Q. (By Mr. Moscovitz) Fix the date when you received the cards and the constitution. A. May 11th.

Mr. Moscovitz: I offer the constitution of the I.B.E.W., the International Brotherhood of Electrical Workers, in evidence. Would you like to see it, Judge Ransom?

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Judge Ransom: Yes.

Mr. Moscovitz: Here it is.

Judge Ransom: May I ask for what purpose this is being offered?

Mr. Moscovitz: The main purpose is to put before the Examiner as part of the proof that the International Brotherhood of Electrical Workers is a labor organization within the meaning of the statute and to also aid in a description of the mechanics of the organization as already described by this witness.

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Judge Ransom: Is it contended by the government or by the Board that the International Brotherhood of Electrical Workers is not a labor organization within the meaning of the Act?

Mr. Moscovitz: No, it is not contended by the Board that the I.B.E.W. is not a labor organization within the meaning of the statute.

The only position that the Board takes in this case is that the company, through its activities with the International Brotherhood of Electrical

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Workers, has continued a practice of which in substance and in effect results in a continuation of the principles of company unionism without giving its employees in any respect an opportunity to make a free choice of what kind of representation they would like to have.

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If Judge Ransom will consent to that, then I will withdraw it.

836

Judge Ransom: Is it the statement on behalf of the Board that it is directing this complaint against the I.B.E.W.?

Mr. Moscovitz: No, it is not the position of the Board that this complaint is directed against the I.B.E.W.; it is directed against the Consolidated Edison System, but it becomes necessary, in the proceeding on this issue, to develop certain facts and circumstances concerning the relationship between the company and the I.B.E.W.

Judge Ransom: May I ask if the Board contends that any issue of representation is involved in this proceeding?

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Mr. Moscovitz: There is no issue of representation involved in this proceeding.

Judge Ransom: You stated before that was your main reason. Is there any other reason for which this exhibit is offered?

Mr. Moscovitz: No, that is all, Judge Ransom. I place no great reliance upon the introduction of that exhibit.

I am perfectly glad or will be perfectly glad to withdraw it because my case does not stand nor fall on the introduction of that exhibit. If

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there is any question at all, I will withdraw it. It is something I felt the Board probably would

S. M. 191

be interested in, that is, to see the constitution and by-laws of the I.B.E.W., and also to see the constitution and by-laws of the United Electrical & Radio Workers, so that the Board would be in a position to determine that we have here a labor

839 organization within the meaning of the statutes.

My case is not dependent whatsoever upon the introduction of the exhibit. If there is any question in your mind about it I will be glad to withdraw it.

Judge Ransom: I understand that it is not contested by the Board that the I.B.E.W. is a labor organization within the purview of the act.

Mr. Moscovitz: There is no question in connection with that. There is no question in my mind that the I.B.E.W. is a labor organization within the meaning of the statute. The I.B.E.W. is a recognized organization affiliated with the

840 American Federation of Labor. It so happens, unfortunately in this case, that certain, a certain local or locals of the I.B.E.W. have become in matter of operation extensions of the old company union in such a way that we have a direct interference with the organizational activities of the system employees.

Judge Ransom: Upon that statement I now make objection that the complaint in this case and the charges in this case present no such issue and no such issue is, by any paper in this case,

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up to this moment, been brought to the attention of any of the respondents.

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The complaint does not refer to any or in any way relate to the former representation plan adopted by the employees which is now referred to as a "company union"; the complaint and charge in this case are in no way related to or directed against any local unions of the I.B.E.W.

The issue which is now tendered is an issue upon which no notice of hearing has taken place.

Trial Examiner Gates: I take it we are proceeding on the complaint.

842 Mr. Moscovitz: We are proceeding on the complaint and I do agree with Judge Ransom, Mr. Examiner, that there is no 8-2 allegation in this complaint. It is my position, and if I am wrong, it will be pointed out, that the testimony which is being given which supports the statement which I made—

Trial Examiner Gates: Do you say there is no 8-2 allegation?

Mr. Moscovitz: No, the testimony is testimony which goes in support of the interference allegation in the complaint, which is to be considered with other testimony that is to be elicited 843 in this proceeding.

Trial Examiner Gates: It does not seem to me that this is pertinent at this point. The ques-

tion here is whether Mr. Moscovitz wishes to continue the urging of the admission of his offer, and whether Judge Ransom wishes to object to it.

Judge Ransom: I object to it on the grounds stated and I might point out that it is in no way binding upon the respondents. It is in no way within the complaint and charge, and I make the

further point specifically that it is stated to be offered in behalf of an issue which is not tendered by the complaint, of which there has been no notice of hearing and as to which, if the issue is offered or were offered upon proper complaint, necessary parties are not before the Board or the Examiner.

Trial Examiner Gates: Can it be stipulated that the I.B.E.W. is a labor organization within the meaning of the statute?

845 Judge Ransom: Well, as far as the respondents are concerned, we have recognized the I.B.E.W. as a labor organization entitled to bargain with the respondents in behalf of such of their employees as are members of the I.B.E.W. As a matter of fact, these companies have had a contract with the I.B.E.W. for many years. We are not contesting the status of the I.B.E.W. as a labor organization under the Act. It is this sudden and surprising contest in behalf of the government against the locals of the I.B.E.W.

S. M. 194

846 which are not before the proceeding, are not before the Board, and the tendering of an issue which is certainly not within the complaint and charge.

Trial Examiner Gates: If there is to be further argument on this point, which does not seem to me material at this time, and you may proceed, but we will go off the record. The point which has been before us actually is, whether either party contests that the I.B.E.W. is a labor organization.

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Mr. Moscovitz: I do not think there is anything mysterious about my statement, and I do not see at all where it goes beyond any of the allegations in the complaint. I did not mean to confuse the issues in this proceeding by giving any one the impression that we were proceeding in support of the company union allegation. The testimony is in support of an interference allegation.

Now, so long as Judge Ransom, in effect, states that the company, the respondent, recognizes the I.B.E.W. as a labor organization, if we can agree by stipulation that it is a labor organization, within the meaning of the statute so that we are in no issue on its standing, I withdraw the exhibit. 848

Judge Ransom: The point that I am trying to make is this, and it seems to me there is tendered here definitely an issue on which there has been no complaint or notice of hearing. I assume—

S. M. 195

Trial Examiner Gates: We are proceeding on the complaint as it is in the record. 849

Judge Ransom: We are proceeding on the complaint, and that complaint does not in any way challenge or attack the I.B.E.W.—

Trial Examiner Gates: I am wondering here if there is not some confusion as between you two. It is quite customary in Board hearings to introduce a copy of a constitution and by-laws of any labor organization that is involved for the purpose of showing that it is a labor organization within the meaning of the statute. If that

850 *Harold Straub—For N.L.R.B.—Direct*

is the purpose of Mr. Moscovitz, it seems to me that there is a misunderstanding between the two of you on that point.

Judge Ransom: I concede, of course, great unfamiliarity with matters in this new field, but I do think there is a little more involved here than just this question of whether this particular pamphlet be placed in evidence because this pamphlet is only a cumulative disclosure of an attitude or a contention on the part of the Board
851 which I do not believe is in this complaint, and on which there has been no notice of hearing or no service of necessary parties.

Over my objection yesterday and today, especially today, your Honor has admitted a great

S. M. 196

deal of testimony of a hearsay character, in no way related to the respondents or any of their officers or supervisors. For what purpose? For the purpose which has been stated here in behalf of the Board, namely, that they are endeavoring
852 to attack the International Brotherhood of Electrical Workers and various of its local unions, within the city of New York and Westchester County, not on the ground that they are not supposed to be a labor organization, but that by the acts of their officers, members and employees, they have become not a labor organization entitled to the protection of the National Labor Relations Act, in the event that it is finally held that the National Labor Relations Act is applicable to any of these respondents as employers.

Now, we say that issue is not here. We say that all this evidence that has been received this

morning over our objection is unrelated to any issue which is tendered by this complaint on which there has been any notice of hearing.

Mr. Moscovitz: Mr. Examiner, I cannot stand by and permit Judge Ransom to remove from the shoulders of the company its responsibility under this complaint, by placing it on the shoulders of the I.B.E.W., so that the issues here become confused. This is not an action, and I would like to make this clear, against the International Brotherhood of Electrical Workers. 854

S. M. 197

This is an action against the Consolidated system because of its discharge of certain employees, and because, by this discharge of certain employees and other acts, it interfered with the organizational activities of its employees. I think that is very clearly stated in the complaint, and I submit the testimony that is being elicited through this witness, and that will be elicited from other witnesses similar in vein to that which this witness has given, is in support of the allegations of the complaint. 855

I do not see, however, that there is any necessity at this point to become involved in further argument on that question. Now, I am perfectly willing to withdraw this exhibit that precipitated this argument. I recognize and agree, if Judge Ransom will stipulate, that the International Brotherhood of Electrical Workers is a recognized labor organization affiliated with the American Federation of Labor, within the meaning of the statute.

Now, if for the Consolidated System who had

recognized the I.B.E.W. or having recognized the I.B.E.W., there can be no question about the entrance of a stipulation on that point.

Judge Ransom: The point that I make, sir, is, I do not want to prolong this argument, and the point is: Of course, the respondents are not contesting that the I.B.E.W. is a labor organiza-

S. M. 198

857 tion entitled to the protection of this statute, if this statute is applicable to the respondents as employers, but the point is that by this persistent course of testimony, offered under a complaint which relates principally to the discharge of five, and now, six employees, there has been a persistent offer and receipt of testimony which is devoted to an attack upon the status of the I.B.E.W. and its numerous locals in this general neighborhood, as a labor organization entitled to the protection of the Act.

If these things were true, the I.B.E.W. would not be entitled to that status. I take it that 858 would be the conclusion which would be drawn and urged.

Now, so far as we are concerned—

Trial Examiner Gates: Just a moment, please. So far as the Act is concerned, as I understand it, a company union or any other independent union is a labor organization. Now, that is the only thing that is at issue here. If both parties admit that the I.B.E.W. is a labor organization, it seems to me there is no point of further discussion.

Judge Ransom: I submit, sir, that under the Act, as I read it—I do not claim to read it with

great confidence or certainty—but a labor union may lose its status as a labor organization or an employees' organization entitled to the protec-

S. M. 199

tion of the Act, by certain acts or practices. Now—

Trial Examiner Gates: Just a minute, please. I think we had better go off the record.

(Discussion off the record.) 860

Trial Examiner Gates: I will reserve decision.

Mr. Moscovitz: I will withdraw the exhibit, Mr. Examiner.

(Exhibit withdrawn.)

Trial Examiner Gates: Let it stand as it is.

Judge Ransom: But the point that I have made with respect to the nature of the proof that has been offered through this witness is not withdrawn, because if anything this witness has said relates to an issue of the discharge of five, now, 861 six employees, I think my few years of practice have been worthless in so far as being able to listen to and appraise testimony.

Trial Examiner Gates: I will ask Mr. Moscovitz to look at Board Exhibit No. 1 and state whether or not a copy of the complaint therein is the one under which we are proceeding.

Mr. Moscovitz: Yes, it is.

Trial Examiner Gates: There are certain markings there which are not clear to me.

We will recess for five minutes.

(Whereupon, a short recess was taken.)

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S. M. 200

AFTER RECESS

Mr. Moscovitz: Mr. Examiner, on the direction that you made to me immediately before recess, may I reserve making certain references, or pointing out certain allegations to you until this afternoon? Judge Ransom has a copy of the complaint which I would like first to compare with the complaint which is in Board's Exhibit

863 No. 1 before answering your question.

Judge Ransom: That is agreeable to the respondents.

Trial Examiner Gates: Very well.

Q. (By Mr. Moscovitz) Since becoming a member of the C.I.O., Mr. Straub, have you continued along the same lines that you did when you were a member of the employee representation plan and the I.B.E.W.? A. No, sir, I have not.

Q. Do you now work exclusively at your regular job? A. I am now working as a cable splicer for the Consolidated Edison Company, yes.

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Judge Ransom: I move to strike out the answer as not responsive.

Trial Examiner Gates: Read the question and the answer, please.

(Question and answer read.)

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) Up until what date were you

S. M. 201

employed by the company as a lineman? A. The week ending May 15, 1937.

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Q. Yes, and after May 15, 1937, was there a change in your employment? A. There was.

Q. What was the change? A. I was transferred from line work to cable splicing.

Q. By whom was that transfer made? A. The transfer was ordered by Mr. E. E. Hill, assistant general superintendent of the departments that I have enumerated before.

Q. And at that time were you a member of the C.I.O.? A. I was.

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Q. Were you active in the C.I.O.? A. I was.

Q. In what regard? A. The day before I joined the C.I.O. and, in fact, for quite some days before I joined the C.I.O., I had been giving it thought and I had been telling the people in and around the place that I was working on Purdy Street, that in my opinion they made a mistake and they would make a mistake if they went along with Local 829 of the I.B.E.W., therefore I thought they should join the C.I.O.; that I intended to do it, which I subsequently did. And I was very active and forceful in explaining to every one I got in touch

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with that the C.I.O. was the organization they should get in touch with.

Judge Ransom: Will you fix the date when you did and said these things.

The Witness: The date is hard to fix. I can name the entire week, and the entire time that I was a member of the I.B.E.W. I never believed that it was the right organization. I joined it, trying to fix in my mind, trying to pick a point in their organization that I thought would be useful.

Trial Examiner Gates: Fix the date.

The Witness: The entire week from May 10th to May 14th I was active, before I joined the C.I.O., and the date that I joined the C.I.O.

Q. (By Mr. Moscovitz) Yes, and have you since becoming a member of the C.I.O. attempted to secure membership for the C.I.O.? A. I have.

Q. Do you do that during working hours or after working hours? A. I do it after working hours.

869 Q. And this change came about from lineman to cable splicer, was that at your own request, or was it— A. No, it was not at my request.

Q. Does it put you on different location than you would be on as a lineman? A. Very definitely so.

S. M. 203

Q. Where would you be on location as a lineman, do you know? A. I would be working in the Bronx, and I mean by the Bronx, the East or West Bronx.

Q. Is that in your home area? A. Yes, it is.

870 Q. Where would you be, where are you, rather, as a cable splicer? A. I am now working in what is known as I-2, meaning installation two, covering the area between 59th Street and 100—I am not exactly sure how far it goes. It doesn't go into the East Bronx. It goes into the West Bronx, covering the East River to the Hudson River.

Q. Is that out of your home area? A. Very definitely so.

Q. Did you do anything about the transfer in the nature of protest, or did you inquire as to why you were being transferred? A. I was notified at six o'clock in the evening after I had completed my day's work as a lineman, that I was to report to 41st Street,

708 First Avenue, and 41st Street, the following Monday morning.

When I reported to the man that I had been told to report to, I asked if I could speak to Mr. E. E. Hill, and he told me that Mr. Hill was too busy, that he would

S. M. 204

let me know some time later when I could see him.

Q. Did you see him? A. Yes.

Q. When? A. Friday of that week.

Q. What date? A. I reported out on the job on the 872
17th, the 21st of May, 1937.

Q. Did you ask him for the reason for the transfer? A. I did.

Q. What reason did he give you? A. He went into a very long descriptive story of the fact that there wasn't any work for the employees of the Consolidated Edison Company, especially in that particular department. He said that they had been scraping the bottom of the barrel for the last seven years looking for work for the employees to do; that they were transferring employees all over the system. He pointed out that they were transferring several supervisors from Queens to 873
New York and other supervisors from New York to Queens.

He went on to add that in looking up my record they had discovered that at one time or another I had done cable splicing and that therefore they had decided to transfer me as a cable splicer in order to find out how much mechanically I would be worth to the Consolidated Edison Company.

S. M. 205

Q. Had you done cable splicing before? A. Three years before.

Q. Yes. Is it different kind of work? A. Yes.

Q. Is it lighter work or heavier work, any different? A. It is perhaps a more technical job. It requires slightly more skill. The manner in knowing how to wipe a joint is important, the manner of knowing how to handle hot lead. It is definitely a different type of work, a type of work that is not assigned to a lineman.

Q. And have you continued at that job since your transfer? A. I have.

Q. Well, was there a let-down of lineman work for
875 you immediately before the transfer? A. No, sir, there was not. There was a let-down of cable splicing throughout the entire system.

Q. But not of the linemen work? A. No, sir.

Q. Do you know whether or not there had been since your transfer an expansion of lineman work? A. There has not been an expansion. There is a definite area that the Consolidated Edison has taken over that was formerly served by the Westchester Lighting Company that is being reconstructed, poles being set up there. There are more poles to set than they have men enough to put

876 S. M. 206

on these poles to change them. The poles have been standing there for several weeks. There are poles set up in the Bronx area that have been waiting for the opportunity to change them over for the last two months.

Q. Did this transfer take you away from men with whom you had regularly and ordinarily come in contact? A. Yes, it does.

Q. So that you now find yourself with entirely new working associates? A. Employees that I had never met before.

Q. Did you testify that since your change to cable splicing work there has been a decrease in cable splicing work? A. Both before—

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Judge Ransom: Objected to. The witness has not shown that he knows anything about it.

Q. (By Mr. Moscovitz) Do you know whether or not there has been a decrease in cable splicing work? A. Yes.

Q. How do you know that? A. From Mr. Hill's statement to me, from the transfer of hundreds of cable splicers all over the system from their regular jobs as cable splicers to stokers in Hell Gate, and at different generating plants in the system, to dusting [illegible] the docks at the waterside edge, competent cable splicers who have been doing that for years.

878

S. M. 207

Q. Do you know whether or not there has been the same change among linemen? A. The only other lineman that I know that has been transferred has been assigned to report July 6th as an assistant at a substation. He has just been transferred recently.

Q. How many linemen are there? A. Oh, there are over 50.

Q. In your company? A. Yes, I believe. In the Consolidated Edison System there are, of course, many more, but in the particular group I was working with there are over 50.

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Q. Do you know approximately how many there are in the system? A. There must be hundreds. I couldn't accurately say.

Q. Have you since—

Judge Ransom: I move to strike out all of this testimony in relation to transferring, on the ground that it is not within the issues presented by the complaint.

880 *Harold Straub—For N.L.R.B.—Direct*

Trial Examiner Gates: It may stand.
Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Have you since your transfer and since becoming active in the work of the C.I.O., noticed whether or not any foremen or supervisory employees have taken steps to secure membership of their employees in the I.B.E.W.?

Judge Ransom: I object to the question as al-

S. M. 208

881 together vague and indefinite and not probative.
Trial Examiner Gates: Objection overruled.

A. Yes sir, I have.

Q. When? A. The first Friday I worked as a cable splicer.

Judge Ransom: Can you fix that date?
The Witness: I can.
Judge Ransom: If you will.

Q. (By Mr. Moscovitz) Was that May 21st? A. That's right.

Q. Yes. A. That morning, the date is particularly
882 fixed in my mind because due to the fact that after attempting to see Mr. Hill all week, finally I succeeded in seeing him Friday morning. I reported back on the job and it was on 132nd Street and Lenox Ave. Incidentally, I had been assigned to work for the man who was to break me in all over again as a cable splicer, irregardless of the fact that there were cable splicers accessible all over the city if they needed one. Then the foreman came out and collected from each of the two men that I was working with their $1.50 initation fee. He came back later in the afternoon and gave them receipts from the I.B.E.W. for their $1.50 in addition to

that, giving them circulars, telling them of the set-up in the I.B.E.W., who the president was and who the vice-president was and who the officers were, and so forth.

S. M. 209

Q. Did you see that? A. I did.

Q. Who was the foreman? A. Mr. McCarthy.

Q. Any one else? A. The two men I was working with, the men he collected the money from, from Mr. Shillinger and Mr. W. Winkler.

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Q. In your presence was this? A. Yes.

Q. And did this foreman sign any receipt stubs? A. He didn't sign any stubs. He brought the stubs back to these people after they had given the $1.50 to him. They were signed by somebody else.

Q. Who were they signed by? A. A man by the name of Callahan.

Q. Do you know who Callahan is? A. A former council member of the street department of the old general council of the Consolidated Edison Company.

Q. That's all.

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Judge Ransom: I understand that it is agreeable to you, in view of the situation on the complaint, that I shall hold my cross-examination until this afternoon.

Trial Examiner Gates: There are one or two questions I would like to clear up.

S. M. 210

EXAMINATION by Trial Examiner Gates:

Q. (By the Trial Examiner) Do you know, from your experience in the I.B.E.W., whether foremen are eligible for membership in Local B-829? A. As I understand it, everybody, with the exception of those peo-

886 *Harold Straub—For N.L.R.B.—Direct*

ple who have not got the right to hire and fire, and employ, is eligible in Local 829.

Q. So, foremen would be eligible if they do not have the right to hire and fire? A. That's right.

Mr. Moscovitz: May I interrupt to ask that the question be read?

(Question read.)

Q. (By the Trial Examiner) You stated some time yesterday afternoon that you had made a request to
887 Col. Stillwell that you be transferred out of the Bronx. Was this transfer on May 15th as a result of that? A. No, sir. The request I made of Col. Stillwell was not that I be transferred out of the Bronx, but that I be transferred out of the particular department that I was working in.

Judge Ransom: Out of what department?

The Witness: Out of the department that I came under the supervision of Mr. E. E. Hill.

Judge Ransom: What department would you—

888. S. M. 211

The Witness: That would include the overhead and underground construction, distribution and transmission department of the Consolidated Edison Company.

Judge Ransom: What department did you want to be transferred to?

The Witness: I didn't care what department, as long as I got out of that department.

Judge Ransom: What date was that you asked for that transfer?

The Witness: The afternoon of Tuesday,

April 20th, the day that Mr. Carlisle announced the recognition of the I.B.E.W.

Judge Ransom: What date was your transfer made?

The Witness: I was notified of the transfer May 14th. The actual transfer took place the following Monday.

Q. (By Mr. Moscovitz) When you say it was the date Mr. Carlisle announced the recognition of the I.B.E.W., what are you referring to? A. I refer to the morning, the day of Tuesday, April 20, 1937, the joint meeting that was held between Mr. Carlisle and the members of the management and the various chairmen of the different general councils. I stated that before Mr. Stillwell left the room that morning, or as he was about to leave it, I asked for an appointment with him that day.

S. M. 212

Judge Ransom: That was the afternoon that you wanted to be transferred to some other department?

The Witness: I said to Mr. Stillwell would he please set the necessary wheels in motion to have me transferred out of the department that I was in.

Judge Ransom: That was the department in which you were then working as a lineman?

The Witness: I worked as a lineman, although that department specifically covered overhead and underground.

Judge Ransom: You went to a cable splicer's school, didn't you, or something like that?

The Witness: I did, for eight years.

Judge Ransom: I will wait until we clear up this other issue.

892 *Charles A. Smith—For N.L.R.B.—Direct*

Mr. Moscovitz: Judge Ransom, do you have any objection to my calling the discharged persons at this time, also the amended discharged witnesses?

Judge Ransom: No, that is what I supposed this complaint was about until this morning and yesterday.

I am reserving until the situation on the complaint is worked out both cross-examination and motions.

893

CHARLES A. SMITH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

S. M. 213

Q. (By Mr. Moscovitz) What is your full name, Mr. Smith? A. Charles A. Smith.

894 Q. Whom are you employed by at the present time? A. No one at present, sir.

Q. You are unemployed? A. Unemployed, yes.

Q. By whom were you last employed? A. The Railway Audit & Inspection Company.

Q. And what is the business of the Railway Audit & Inspection Company? A. Called a detective agency.

Q. Where is that company located? A. Nationally located.

Q. Does it have an office in New York City? A. Yes.

Q. How long were you employed by the R. A. & I.? A. The last time, the Spring of 1934 until the Spring of —the middle of the summer of 1935.

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Q. Were you employed through the New York office of the R. A. & I.? A. Yes.

Q. Were you ever employed through any of the other offices of the R. A. & I.? A. New York and Boston.

Q. Was it always an employment through the New

S. M. 214

York City office and then a transfer to the Boston office, or did you become employed directly at the Boston office? A. That is what I had, a transfer from New York to Boston.

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Q. When you say that you worked for R. A. & I. until the middle of the summer of 1935, can you fix a little better the date for our purposes? A. May, I think it was.

Q. May, 1935? A. Yes, something like that, around May.

Q. All right, and what was your job with the A. R. & I.? A. I had various jobs there, detective work they call it, detective work.

Q. Did you act as an under-cover operative? A. Yes.

Q. Can you give us some description of what your work entailed? A. Well, I was covering union activities in one union and there is men that belonged to other unions.

897

Judge Ransom: I cannot hear anything the witness is saying.

Trial Examiner Gates: Will you speak a little louder, please?

(Last question and answer read.)

S. M. 215

Q. (By Mr. Moscovitz) Did you work under instructions from an R. A. and I. official? A. Yes.

Q. Who was the R. A. and I. official who gave you your instructions? A. Foster Strader.

Q. Is he in this room today? A. Yes.

Q. And what is his official position with the R. A. and I.? A. Well, I have always taken him as the New York manager.

Q. Is he the person whom, so far as you know, is in charge of the New York office? A. Yes.

Q. Is he the person who always gave you your instructions? A. Yes.

899 Q. Did you at any time, while employed by the R. A. and I., receive instructions to do any work in the Consolidated system? A. Yes.

Q. And do you recall what company or affiliate of the system you were instructed to work in? A. The Gas Company, out in Astoria.

Q. In Astoria? A. Yes.

Q. Do you recall the full name of the company? A.

S. M. 216

Queens Gas and Electric, if I am not mistaken.

Q. Is that the New York and Queens Electric Light
900 and Power? A. It is an affiliate, I imagine. All I know is the gas company is out on the river front there in Astoria.

Q. Long Island? A. Yes.

Q. Now, did Mr. Strader give you any particular instructions as to what you should do while working as an undercover agent in the Consolidated System? A. Yes, he give me a card, with a picture of a man on it, a company card, to take a look at that man, go out and pick him up at the gate, take him home, see where he went at night time, what union halls he went to, pick him up the next morning, take him to work, pick him up at dinner time, take him home, spend the whole day and

take him to town at night time, make reports on what halls or meetings he attended to, anything like that.

Q. Did you, while doing that—this work, work as an employee of the company? A. No, sir.

Q. And when Mr. Strader told you to pick him up, or pick this person up, did it necessitate your actual meeting the gentleman or did you just follow him? A. Just followed him.

Q. Were you supposed to follow him so he wouldn't know he was being followed? A. Yes. 902

S. M. 217

Q. Did you trail him wherever he went? A. Yes.

Q. Who was the person whose picture you received whom you were to trail? A. Mr. Solosy.

Q. Is he here today? A. Yes.

Q. Which gentleman is he? A. The boy here with the glasses.

Q. Is that Solosy? A. I forget how you spell it.

Q. Is that Mr. Stephen Solosy? A. Yes.

Q. How long did you trail Mr. Solosy? A. I don't know exactly the amount of days. I would be on a couple of days, two days, three days, then off on something else and then back on the job again. I imagine probably eight or ten times at most, maybe under that amount. I didn't make any check of it to see. 903

Q. During what period of time? A. I think that was during March and April.

Q. 1935? A. 1935, yes.

S. M. 218

Q. And were you given any particular instructions as to just what to do regarding Mr. Solosy's activities? A. Well, to see the people he met, whom he had meetings with, if he went to any union activities, meetings of

any kind, any union halls, or anything pertaining to union activities.

Q. Was Mr. Solosy attending union meetings during that time?

Judge Ransom: Objected to. Witness has not shown that he knows.

Q. (By Mr. Moscovitz) Do you know whether or not Mr. Solosy attended union meetings during that time? A. Well, he went to one one night.

Q. Where? A. I don't know if it was a union meeting. There was quite a few men on Irving Place or Irving Place, some friend of his, some friend's apartment. They had a meeting of some kind there, so I imagine it was a union meeting.

Q. Is that where you reported it to Strader? A. Yes.

Q. Did you report to Strader that it was a union meeting? A. I don't recall whether I did or not.

Q. Did you report to Strader that Mr. Solosy had attended a meeting? A. A meeting, yes.

Q. Did you report that it was a union meeting? A.

I can't say whether I did or not. I might have said there was quite a few men there that went into that.

Q. Did you make any other report to Mr. Strader? A. Where he went and what time he got there and what time he went home, what time he went to work, what time he went to lunch, what time he knocked off from work, what time he left his house to go out in the evening, his whole actions for the day.

Q. Were your reports on Mr. Solosy to Mr. Strader in writing or over the telephone? A. In free hand.

Q. In free hand? A. Yes.

Q. Writing? A. Writing.

Q. Did you sign your reports to Mr. Strader under your regular name or did you have an operative's number? A. I had an operative's number, that was the heading, and sometimes I would sign my name and sometimes I would not.

Q. Were there any other operatives that worked with you during that period of time? A. Three or four others.

Q. Three or four others? A. Yes.

Q. Do you know whether or not these operatives were 908
under instructions to shadow Mr. Solosy too? A. Yes,

S. M. 220

two of them were, yes, because they got instructions the same time as I got mine.

Q. Who were they? A. One of them was Brown, William Brown.

Q. Who is he? A. He is an operative for the R. A. and I. I believe he is still working for them.

Q. Is he the gentleman who was arrested in Albany in connection with election frauds? A. Yes, for election frauds. 909

Judge Ransom: Objected to, and I move to strike it out as wholly immaterial and deliberately prejudicial.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Was his work done in connection with your own at the same time that you were shadowing? A. Yes, at the same time with me.

Q. Did you split up your time or did you work together? A. Well, we took spells.

Q. Did he continue working for the R. A. and I. and

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trailing Solosy after you left the employ of R. A. and I.? A. To my knowledge yes.

Q. How about other persons, how about the other man? A. Well, I don't know his name, Ralph Golden.

S. M. 221

Q. Who is he? A. I don't know what he is.

Q. Well, did you ever hear of Ralph Golden before? A. Oh, yes.

911 Q. In what connection? A. Well, he handled a lot of jobs when there were strikes and I understand he worked on a carline job a few years ago for the R. A. and I. He was on this job in Jersey City where he shot a fellow over there.

Q. On the Pulaski Highway? A. The Pulaski Skyway.

Q. How long did he work with you? A. Well, it was only two nights that I met him. He was following Mr. Solosy's side kick, I think.

Q. Who is that? A. Ewing, I think.

Q. What was Ewing's job at that time? A. Ewing was in the Newark Gas Company, not in the Astoria,

912 the Newark, but he lived on Irving Place, Ewing did, and Solosy used to go from his house to Ewing's house at night time. They would meet there and go out wherever they went.

Q. Did you submit daily reports on Solosy to Mr. Strader? A. When I worked on him, yes.

Q. Did you ever submit reports to anyone in the company on Mr. Solosy? A. No, I carried reports to the company.

S. M. 222

Q. To whom? A. To the Edison Branch in Brooklyn, and the one on 14th Street.

Q. To whom? A. To Parker and the head of that secret service over there, whatever they call it, in Brooklyn.

Q. What was his name? A. I don't recall his name.

Q. Were they reports that you carried to these men which were given to you by Mr. Strader? A. They were reports I imagine on all the employees at different times, because the R. A. and I., I understand from two other operatives, were working on the Brooklyn end.

Q. Do you know whether or not the reports that you carried were also reports concerning Solosy? A. I 914
wouldn't say that because I didn't open the package and read them. It was a sealed package.

Q. Do you know whether or not you ever carried R. A. and I. reports to the president of the company? A. Well, there was one man I carried reports to, I couldn't get in to see him, but I gave it to his secretary, I thought. I was told to give it to him. I think it was on the 14th floor, or something, down here in 15th Street.

Q. Was that the Mr. Parker to whom you referred?

S. M. 223

A. I was down there two or three times. 915

Q. Was that the Mr. Parker to whom you referred? A. There was Parker and some other man. I forget his name.

Q. Who were these other two men that worked with you? A. I only know one by the name of Izzicks. I don't know his first name. The other fellow I only know his first name, Joe.

Q. Up until what time did they work for the R. A. and I. in the system? A. They were there when I left.

Q. And you left in May, 1935? A. Yes.

Q. They were there when you left? A. Yes.

Q. When you sent the reports to Mr. Strader in long

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hand, would you send them to his office or to a post office address? A. Sometimes I wrote them out in the office in the morning, sometimes I would send them to the post office address.

Q. Was that the post office address in the Grand Central? A. Annex.

Q. Grand Central Annex? A. Yes.

Q. Do you recall the box number? A. 123.

Q. Did you, outside of making reports on Solosy, make reports to Mr. Strader concerning the general

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S. M. 224

union activities of the employees in that company?

Judge Ransom: Objected to as wholly vague and improper in form, leading, calling for a conclusion.

Trial Examiner Gates: It may be answered.

Judge Ransom: Exception.

A. I didn't make any report on the general activities.

Q. (By Mr. Moscovitz) Have you worked for R. A. and I. since? A. No sir.

918 Q. Have you been called to work for R. A. and I. since? A. No sir.

Q. Have you worked for any other detective agency since? A. Yes, I worked for two, three.

Q. In this company? A. No, not in the R. A. and I.

Q. Did the work for any of these other detective agencies carry you into the Consolidated system, is what I mean? A. No sir.

Q. What agencies were they? A. A. and L. Smith and Connellen, O'Connor and one fellow I worked for by the name of Irish Williams. He has a license but no office.

Q. How long have you been doing this kind of work? A. Since 1927.

Q. Since 1927? A. Yes.

S. M. 225

Q. How long had you been employed by R. A. and I., outside of this period when you were in the Consolidated system? A. I was with them for a year and some months before, in 1928.

Q. In what capacity? A. In investigating union activities in Boston.

Q. Your work always concerned securing information regarding union activities of employees? 920

Judge Ransom: Objected to as leading and in no way binding upon the respondents.

Trial Examiner Gates: Objection sustained.

Judge Ransom: May the answer be stricken out?

Trial Examiner Gates: It may.

Q. (By Mr. Moscovitz) That is all.

CROSS EXAMINATION:

Q. (By Mr. Ransom) Now, when did you say that your work for the railway and Audit Company first 921 brought you into any duties that related to the Gas Company in Astoria? A. March and April.

Q. You are not able to fix the date more definitely? A. No, I did not keep any record of it after I turned in my reports.

Q. You were instructed by Mr. Strader to follow at night and at noon a man named Solosy? A. Yes.

S. M. 226

Q. Do you know what department of the company he was in? A. Yes, he was in the laboratory, the Gas Company in Astoria.

Q. In the chemical department in Astoria plant, do you mean? A. I never was in the plant, I couldn't say if it was chemical. I got his description off of a gas company card with a picture and it stated the man was a laboratory worker, but he might have been sweeping up in there. I didn't go in there.

Q. You don't know what work he did in the department? A. I understood he was—what do you call it—well, like a pharmacist. In other words, he mixed some kind of stuff up down there, a chemist of some kind, or
923 an assistant chemist.

Q. Now, you say you followed him somewhere around ten different occasions? A. I said no more than ten, and probably less, but very little less.

Q. Not continuously during that time? A. No, I had other days, so that, you see, if one man goes after one man all the time, he might get wise to him, so they take you off.

Q. But you reported what you found that he did? A. Oh yes.

S. M. 227

924 Q. Were you given any instructions as to why you had been assigned to this man? A. Well, the only thing I knew was that he was a union man and we was always instructed to watch the union men and see what activities they had, and find out if he was an officer if we could, of the union.

Q. Do you know of any union of which he was a member? A. No.

Q. You spoke of following him to a meeting at some house where there were other men? A. Yes.

Q. Where was that? A. Irving Place, I don't know the number, but I could take you right to the house.

Q. You don't mean the company office? A. No, it

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is above that, more toward the park, it would be between 17th and 18th Street or 18th and 19th Street on the west side.

Q. Some private residence? A. Yes, restaurant in the cellar.

Q. Did you go into the house? A. No.

Q. But you saw various men go upstairs? A. Yes, they went upstairs to this fellow's room where we could look through the window and they had a light on, they

S. M. 228

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had the curtain up.

Q. And when did this following of Mr. Solosy cease; do you know? A. The exact date I do not know.

Q. But it was not later than April of 1935? A. I couldn't say that but I asked to get off it, to be candid with you, I said I wanted to get off it because the man is wise to me because I didn't like the job out there from six in the morning until this fellow had done at night at eleven o'clock for one day's pay.

Q. But in any event you had nothing to do with it until some time in April of 1935? A. No, I did not.

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Judge Ransom: I move to strike out the testimony of this witness completely on the ground that the complaint and the charge here relate solely and exclusively, as it must to any employment of operatives since the taking effect of the Act. The Act went into effect July 5th, 1935. Anything prior to that, even if the Act were applicable to the respondents as employers, would not be a matter within which this Board would have power or jurisdiction to inquire.

Trial Examiner Gates: Motion to strike is denied.

Judge Ransom: Exception.

In view of the fact that this Board could have no jurisdiction, that even if the Act were applicable to the

S. M. 229

respondents there were no provisions of law under which this proof was made in effect before July 5th, 1935, I have no further cross cross examination and stand upon my motion to strike.

Trial Examiner Gates: You may be excused.

929 (Witness excused).

FOSTER STRADER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Mr. Strader, are you employed by the R. A. and I.? A. The Railway Audit and Inspection Company, Inc., yes.

930 Q. In what capacity? A. Assistant manager.

Q. How long have you been employed by that company? A. Since 1917.

Q. In the same capacity? A. No, various capacities.

Q. What capacities? A. Well, I started there as an investigator then went in as an office boy, then assistant to the manager, and district manager for the last two years.

Q. Are you also an officer of the R. A. and I.? A. No sir.

Q. When you went with the company in 1917, you went with them as an investigator? A. Yes.

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S. M. 230

Q. You heard the testimony of Mr. Charles Smith who preceded you? A. Yes.

Q. Was your work as an investigator the same kind of work that you did while you were employed by the R. A. and I.? A. No, I worked on about one job, that was during the war in connection with some sabotage by the Germans of a harness factory. The Germans were trying to commit or had committed sabotage on a harness factory.

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Q. Have you ever done the kind of work that Mr. Smith described while he was on the stand? A. I have done some shadowing work, yes sir. I have done some shadow work.

Q. Regarding labor organizations? A. Yes sir.

Trial Examiner Gates: Will the witness please speak up a little louder so that the reporter may put down what he is saying. It is necessary for you to talk sufficiently loud for him to hear you.

The Witness: I beg your pardon, sir, I will do so. It was very little, but it probably—it was.

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Q. (By Mr. Moscovitz) What was that? I asked you if you had ever done anything—any kind of work that

S. M. 231

Mr. Smith described while he was on the stand regarding labor organizations; the type of work that he had reference to? A. Although it was very little, probably it was, yes.

Q. You are not sure? A. No, I just helped out occasionally when they were short-handed.

Q. Does your office, or did your office do that kind of work? A. We do and did shadow work.

Q. In labor cases? A. Not particularly labor cases, no sir.

Q. But you do do that kind of work in labor cases? A. We have shadowed people that are in labor unions but not just because of their labor union activity or association.

Q. For what reasons, for instance? A. Well, almost any reason that you want to know what they are doing, you want to know what they are doing and where they are doing it.

935 Q. What is the purpose of securing that information? A. Some client wants to know that.

Q. Do you know what the purpose of securing the information is? A. Not always, no sir.

Q. Have you in your capacity ever given instructions to men to secure information regarding the labor affiliations of certain individuals? A. To find out if he belonged to a union?

S. M. 232

Q. Yes. A. Yes.

Q. So that that information could be reported to the 936 company that employs that man? A. Yes.

Q. Have you ever given instructions to the men employed by you to secure such information while you were representing the Consolidated Edison System? A. No sir.

Q. Were you ever employed by the Consolidated Edison Company? A. My company was, yes sir.

Q. Do you recall when? A. From 1933 until last October.

Q. That would be October, 1936? A. October, 1936, yes.

Q. Do you recall in what companies of the Consolidated Edison System the R. A. and I. worked? A. New

York Edison, Brooklyn Edison, Consolidated Gas, New York and Queens Electric Light and Power, Light and Power, yes.

Q. Did you have complete charge of the work that was being done in those companies? A. Well, I would say so, yes sir.

Q. What was the nature of the work that you were

S. M. 233

employed to do in those companies? A. Well, there were several things. The company had been receiving 938
a lot of threatening letters, people going to blow up the power houses, or the switch houses.

Q. Yes. A. They were going to harm officials, there were letters coming in that foremen were too strict in picking out certain people to pick on, you might say, and things of that nature.

Q. Yes. Have you left out any other? A. Then, there was a lot of meter jumping.

Q. Have you left anything out? A. I do not think so.

Q. Were you also asked to secure information regarding the labor membership of some of the employees 939
of these companies? A. Of a particular individual?

Q. Yes. A. No, sir.

Q. Or of any individuals? A. No sir.

Q. Do you have the records with you of the relationship that existed between yourself and the Consolidated Edison Company or the Consolidated Edison system during the period of time that you worked on the sys-

S. M. 234

tem? A. I have all that we have. These records also go back further than your subpoena calls for because

940 *Foster Strader—For N.L.R.B.—Direct*

they are sheets out of our bookkeeping machines and that goes back as far as 11933?

Q. For what? A. What do you mean by that?

Q. Up to what time? A. Up to the discontinuance of the service, October, 1936.

Q. What do these records show? A. All these show is the amount of the monthly bill and the amount of cash received on it.

Q. That is all your record shows? A. And the date the bills was rendered, the bill number, the operative
941 number, the amount of the bill, the amount of the credit and the balance in the amount.

Q. May I see it? A. Yes. (Witness hands this document to counsel for the Board.) There is one other that does not even belong there but I brought it because it was discontinued in 1934, I brought it to show you so you will have the complete picture.

Q. Yes. Now, thank you. A. Yes, sir.

(Counsel examines the documents then handed to him.)

Q. These records, how, which you showed me, do not indicate anything but the amount of money that you re-
942 ceived for this work; is that right? A. I would say that

is all; those things that are enumerated on here, but that is the sum of it.

Q. Is there anything on those records which indicate whether or not the R. A. and I. did any spying work on individual employees of the companies for the purpose of securing information regarding their labor affiliations? A. No, sir.

Q. Did you put on your records any place the kind of work that your operatives do for you? A. No, we do

not, in general, it is "Investigation", or "Shadowing", that would be probably about the only thing that we would put on there.

S. M. 236

Q. You never disclose whether they are investigating a labor matter or a social matter or an educational matter, or whatever the matter may be? A. That would be in the original order.

Q. From the company? A. Original order, I write up, when I get the order, to do certain work. 944

Q. Do you have those orders? A. No, sir.

Q. Where are they? A. I have not had any for over a year or more.

Q. What happened to them? A. Why, we threw them out, we throw them out, you see, when a job is over, we just throw them out.

Q. When were the orders destroyed? A. On these?

Q. Yes. A. Probably away back in 1933, there was only the one order ever written on this company.

Q. Do you not have any orders written for the 1936 activity? A. No, the order is written for the job when the job is received. 945

Q. What? A. The order is written when the job is received.

Q. What is the nature of the order which you write?

S. M. 237

A. It would give the code of the client. the address to send the report to, the amount to be billed every day, the expense allowance, if any, and the sort of operative wanted, the detail of the case, just what we were to endeavor to find out.

Q. What officer or official of the Consolidated Edison

System employed you? A. Well, now, that started before the period covered in your subpoena. Your subpoena covered from January 1, 1935 and ended to date, but we were working for them in 1933.

Q. Yes. Well, will you give us the name of the person who first employed you? A. I think it was Mr. Frank Smith.

Q. Who was he? A. He was the president.

Q. Of the Consolidated Edison? A. Of the New York Edison Company.

947 Q. New York Edison Company? A. Right.

Q. Did you make your reports to him? A. I made some to him.

Q. To whom did you make them otherwise; if any? A. I think in Brooklyn we sent some to Mr. Parker.

Q. Mr. John H. Parker? A. John H. Parker.

S. M. 238

Q. Is that the Mr. Parker to whom Mr. Smith was referring in his testimony? A. I suppose so, only his testimony was all mixed up.

Q. Perhaps you will, then, please straighten some of
948 it out for us? A. Yes.

Q. Mr. Smith testified that he had taken certain messages? A. He took an envelope but he did not know what was in it.

Q. An envelope to Mr. Parker? A. Yes, sir.

Q. Is that the same Mr. Parker? A. He has probably gone over there, I think, but I do not remember it.

Q. That would be the same Mr. Parker, however? A. Yes.

Q. All right. A. Yes.

Q. To what other men or man did you make such reports, or to whom did you submit reports of any character? A. I do not recall, offhand, I have made several,

949

myself, there, but those are the two that we received orders from. We have made reports to several men over there, but they were not men that gave us any orders.

Q. Did you submit reports to Mr. Carlisle? A. No, sir, never.

M. 239

Q. Did you always submit reports to the president of the respective company or companies? A. Yes, sir, I would say that I do not remember any one any less than that.

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Q. No one in a lesser position than that? A. That is right.

Q. It would be the president of the company or some one higher? A. They could not be much higher.

Q. They could not be much higher? A. No.

Q. It would have to be the chairman of the board of directors, would it not? A. Well, it is rather technical there. I think Mr. Smith is chairman of the Brooklyn Edison at the same time we gave reports to Mr. Parker, but we never gave any to Mr. Carlisle, who is chairman of the new company.

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Q. When did you cease submitting reports? A. Cease reports?

Q. Yes. A. In—written reports around July of last year.

Q. July, 1936? A. Yes, sir.

Q. July? A. '36, right.

S. M. 240

Q. After you stopped submitting written reports, you continued to make reports by word of mouth, did you? A. Short ones.

Q. By telephone? A. Sometimes, and sometimes I would go down there and take it.

Q. Did you ever submit them in shorthand? A. No, sir.

Q. To whom did you make a report after you stopped making written reports? A. Mr. Parker came over to New York about that time and I quit giving him any reports. I gave them to Mr. Smith and then he was out of town and I just got out of the habit of dropping them in because we did not have very much work, any-
953 how.

I do not remember any one else after that.

Q. Mr. Parker was the president of the company in which Mr. Solosy was employed? A. Oh, no.

Q. What company was Mr. Solosy employed? A. He was employed by the Consolidated Companies—by the Consolidated Gas Company, I mean.

Q. What was it, now? A. He was employed by the Consolidated Gas Company.

Q. Do you recall up until what date he was employed in that company? A. No, sir, I do not know. He was

954 S. M. 241

not there—I mean, I did not know he was not there until this morning, or, rather, yesterday, when I heard you say he was discharged.

Q. What was that? A. No, sir; I did not know he was not there until yesterday morning when I heard you say he was discharged.

Q. How did you know that he was employed by the Consolidated Edison? A. I looked it up.

Q. The Consolidated Gas Company? A. I had a little investigation to make on him.

Q. When did you have an investigation to make on him? A. April, 1935.

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Q. At whose request was that investigation made? A. Well, it was not exactly a request. I saw Mr. Smith one day, and he had a little circular there that some one had sent in to him and he asked me if I would get busy on it and find out what it was and who had been instrumental in having it published.

Q. What was the name of that publication? A. I think it was called the "Gas Plant."

Q. Was that concerning a labor organization? A. Well, it did not represent any official organization, no.

Q. Was it an organizational leaflet? A. No, if I re- 956

S. M. 242

member it, it had no organization name on it.

Q. What did it concern? A. Well, a lot of radical articles in there, and little kicks on this and that in different departments.

Q. What were the radical articles to which you refer? A. I could not tell you now.

Q. Were they labor references? A. They would be labor, but it was not organization in any way that I know of. It was not any union that you have mentioned here, I remember that part of it. I remember that much about 957 it, I do.

Q. What did it pertain to; did it have to do with methods of organization; did it have to do with the desire of employees to be organized? A. No, it tried to get them to become organized, I think, but it did not represent any employees wanting to be organized outside of the men who were in it.

Q. Was Mr. Solosy one of the men that was in it? A. Yes, sir.

Q. How do you know that? A. His name was on it.

Q. What was the name of the other man? A. Buck Ewing.

958 Q. Is that spelled B-u-c-k and E-w-i-n-g? A. Yes.

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Q. Having these names, what instructions did you give to your operatives regarding these men?

Judge Ransom: I object to all this testimony in that it relates to a period before the taking effect of the Wagner Law so that even if the Wagner Law were applicable to these respon-

959 dents this would not be within the scope of inquiry here; also, it is completely outside of this complaint.

Trial Examiner Gates: Objection overruled; proceed.

Judge Ransom: Exception.

A. Why, I started out to shadow them and see what they might be doing in the evenings.

Q. (By Mr. Moscovitz) What was the purpose of your shadowing? A. To see what they were doing.

Q. About labor organizational work? A. Anything covering them to see what they were doing.

960 Q. What did you want to know?

Trial Examiner Gates: Do not be so evasive about this matter, be frank about it, like the other witness was before you.

A. I am absolutely frank. I am not evasive. I gave my men instructions to shadow these two men to see where they were going and what they were doing. This man that was on the witness stand before you here lied to you, and you did not say to him anything when he told

S. M. 244

you a bunch of stuff that is not connected with this case

at all, and a lot of stuff that there is not a vestige of truth to it.

Q. (By Mr. Moscovitz) Mr. Smith testified that he was acting under your instructions issued to shadow Mr. Solosy? A. He shadowed him for two days, or was supposed to, and he could not even keep him covered, and I fired him for it. He only worked two days on that job.

Q. He did not do a good job? A. No, he did not. He lied.

Q. He complained that you worked him too many 962
hours? A. He did not work. He lied. That is the reason I fired him.

Q. What? A. He did not work. He lied. That is the reason why I fired him.

Q. All right. In any event, there was some difficulty between yourself and Mr. Smith? A. No difficulty.

Q. About the covering of Mr. Solosy? A. Solosy—I just fired him because he was over here in New York and called on the telephone and reported to me that he was over there in Astoria.

Q. Did you put some one else on the job? A. No, we discontinued it.

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S. M. 245

Q. You discontinued it? A. Yes, sir.

Q. Did you discontinue shadowing Solosy? A. Yes.

Q. When did you discontinue it? A. After two days.

Q. What was the date? A. Well, I do not know exactly, but it was just two days, around the neighborhood. He did not do anything and just went home one day and one time he went up into the country over the week-end and we did not follow him up there, we just let it go.

Q. Did you have him shadowed? A. Who?

964 *Foster Strader—For N.L.R.B.—Direct*

Q. Smith. A. No, Solosy.

Q. Solosy went to the country? A. Yes.

Q. Did he come back from the country? A. I do not know. I never heard of him since then until yesterday when I heard his name here.

Q. Did you submit a report on Solosy to the company? A. Yes, sir.

Q. How many reports? A. Well, I had two men on that job and probably four reports.

965 S. M. 246

Q. How long did you have these two men on him? A. I had the two men on him for two days.

Q. Was that after Mr. Smith was taken off of the job? A. No, he was one of the men.

Q. What? A. He was one of the men.

Q. He was one of what men? A. The men that were shadowing him; yes, sir.

Q. And you had Mr. Smith and another man? A. Yes.

Q. Who was the other man? A. William Brown.

Q. You discontinued the service of both of these

966 men? A. Yes.

Q. Did Mr. Brown lay down on the job, too? A. No, he did a very good job.

Q. Was it Mr. Brown's report which you sent down to the company in regard to Solosy? A. No. I sent Smith's report down there also.

Q. What were these two reports? A. Very little, if anything, that I remember, just the man went over—the man went to his home, and he went over in New York one evening, and I think the next evening I believe it was on a Friday, he was out of town, up in Connecticut, I believe.

S. M. 247

Q. Do you recall what part of Connecticut? A. No, it was some small town.

Q. What? A. It was some small town.

Q. Do you remember which operative gave you that information? A. Mr. Brown.

Q. How do you know he went to a small town in Connecticut, if you did not cover him up there? A. Some neighbor told him that that was where he had gone.

968

Q. That Brown learned that; that Mr. Solosy went to Connecticut? A. No, sir.

Q. Did Mr. Brown go up into Connecticut to verify that statement? A. No, sir.

Q. The neighbor simply told him that the neighbor told Mr. Brown? A. Yes.

Q. Was that after he left? A. Yes sir, that was after he left in a car.

Q. After he left in an automobile and then Brown found out the next day? A. No, that day.

Q. When was it that Solosy left? A. In the afternoon or evening.

969

S. M. 248

Q. In the afternoon or evening? A. Yes.

Q. Did you shadow him up in Connecticut also? A. No, we did not shadow him up into Connecticut also.

Q. How much longer after that time did you continue sending your men into that company? A. I did not send a man into the company. These men were not in the company. They were shadow-men out in the street.

Q. How long after that did you continue to shadow men of the company? A. That is the only time I recall of any actual shadowing of employees.

970 *Foster Strader—For N.L.R.B.—Direct*

Q. How long after that did you have men— A. (interposing) We had and did investigations for them until October, 1936.

Q. Was the investigation now work that you did, work that had anything to do with labor organizations? A. Only incidentally, in connection with the sabotage and the endeavor to blow up the Hudson Avenue plant which led us into the union headquarters there, and resulted finally in the conviction of two of the officials of it.

971 Q. There was or, I will put it this way, was there ever a time after Brown and Smith were taken off the job that you had any men in that plant or watching that plant?

Judge Ransom: Which plant?

S. M. 249

The Witness: Yes, I should like to know which plant you have reference to.

Q. (By Mr. Moscovitz) The plant. A. We never had any one over in the gas plant but for that one little job.

972 Q. But for the one little job, you never had any one over in the gas plant or in the gas plant? A. Right.

Q. Did you have any men working on gas matters? A. Oh, for the Consolidated Gas Company probably, but not on the gas works, or in the gas works.

Q. What work did you do then for the gas company after Mr. Solosy left? A. Well, we looked up these two fellows that tried to wreck the Hudson Ave. plant, a couple of officials, a couple of union officials, but it is my recollection that was later.

We worked on that job, off and on, for nearly a year just on the question of finding out exactly who it was that did it and it resulted in two of these men going to jail for doing that job.

We investigated the matter of the sabotage up at Hell Gate, somebody, some one apparently shorted a transformer, not a transformer, but a bus-bar in the power house. We worked on the matter of an organized gang which was working up in the Bronx, and these people were actually going around and soliciting the sale of

S. M. 250

little articles to be put on meters, jumpers to be put on meters, in order to steal electricity, and their men were 974
running up and down Eighth Avenue selling these things which were used for the purpose of stealing electricity.

Q. Have you done any work since October, 1936, for any of the Consolidated companies? A. No, sir, positively not.

Q. Did you shadow any other employees up to October, 1936, of the companies? A. We shadowed this fellow O'Shaugnessy, that is one of the union officials that tried to wreck the Hudson Avenue plant.

Q. Did you shadow Mr. Wernick? A. No.

Q. Mr. Kennedy? A. No.

Q. Mr. Emile? A. No.

Q. Mr. Wagner? A. No. I never heard of Mr. 975
Emile or Mr. Wagner.

Q. Never heard of Mr. Wagner? A. No.

Q. Can you give us the names of some of the employees that you did shadow? A. Those are the only ones, these two boys at the gas company and the other

S. M. 251

two in connection with the blowing up attempt on the Hudson Avenue plant.

Q. Were there any leaflets that you inquired into of the company that went out over the name of Mr. Solosy; other than this one? A. Not of his.

Q. Did you inquire into any leaflets other than the one connected with Mr. Solosy? A. Yes, lots of them.

Q. Up until the period of time you quit work or, we will put it this way, up until what period of time did you inquire into those leaflets? A. Practically any time at all we were working on those leaflets. It was more or less of a continuous proposition.

Q. Did you inquire into any of them in the latter part of 1935? A. I would not swear to it offhand, but I think so.

977 Q. At any time in 1936? A. I would say so, but I could not know definitely.

Q. Did you have,—do you have any recollection of what kind of leaflets they were that you were inquiring into? A. A good many of them were the rankest communistic literature you ever read in your life, revolutionary stuff.

Q. You say, "revolutionary stuff"; will you refer to the substance of some of these leaflets? A. Well, peo-

ple that want to— I do not know, revolutionize, anarchis-
978 tic people, trying to destroy anything that is of any good in the country.

Q. What was there in any of these anarchistic or communistic leaflets or about these leaflets which caused you to inquire into them? A. Oh, terrible they were. I could not quote you now, I do not have any of them.

Q. Give us the substance of what they said. A. Stuff like the C.I.O. is doing out there in Michigan, occupying plants and taking the law into their hands.

Q. What did they say? Was that described in any way in these leaflets? A. No, but I mean that it was that nature of stuff.

Q. That nature? A. They tried to blow up the plant over here, you know.

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Q. Was that in the leaflet? A. No.

Q. What was there in the leaflets? A. They supported the idea and they had the stuff in them to incite the people to do those things.

Q. What was the stuff that you refer to? A. Of that nature.

Q. Of what? A. Communistic literature.

S. M. 253

Q. I am looking for the language in them, that is what I want to know. A. I do not remember the language. It has been some time ago. 980

Q. It was in 1936? A. Yes, and I had dozens of them.

Q. Were they C.I.O. leaflets? A. No, there were no C.I.O. leaflets, not that I know of, at least I never heard of them.

Q. Just labor organization leaflets, is that it? A. No, not labor, Communism, well, just there was some, there was some brotherhood leaflet, but they were not such radical leaflets.

Q. When you say "Brotherhood," you mean the Brotherhood of Utility Workers? A. Yes. 981

Q. You do not mean the International Brotherhood of Electrical Workers? A. No.

Q. You mean the independent organization? A. That is the one.

Q. The substance of that leaflet was what? A. Well, unionism for that one.

Q. Unionism, instructions? A. No, this was the stuff of this fellow Stonka, that old I.W.W. worker over there.

S. M. 254

Q. Was Mr. Wernick's name on any of these? A. Wernick?

Q. Was Mr. Wertzing on it? A. Yes.

Q. How do you know of Mr. Wertzing's activity in that regard? A. I had some of these leaflets.

Q. Did you inquire into Mr. Wertzing in connection with it? A. It was printed on them.

Q. You found Mr. Wertzing's name on leaflets when you inquired into them? A. We did not have anything to do with inquiring into the Brotherhood leaflets.

Q. What? A. Well, it is all printed right in the open who they are. You do not have to inquire into it.

983 Q. They were ascertainable right from the very face of the leaflet itself? A. Yes. They did not have these communistic leaflets that I am talking about there.

Q. How did you come across Mr. Wertzing's association with these leaflets? A. I saw the leaflet and I saw the articles in the Daily Worker, and that other radical newspaper, The New York Post.

S. M. 255

Q. Well, we will not go into that, but I would like for you to give us a line on the inquiry that you made into the leaflets that Mr. Wertzing was associated with.

984 A. I do not think we ever inquired into that. That is what I am trying to tell you.

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Q. What kind of inquiry would you make on any of these leaflets? A. Well, we had leaflets down there called "Edison Employees," and "Rank and File" and names of that sort, with communistic ideas on there, and addresses that were strictly communistic addresses on the base of these around Broadway and 14th, around that communistic building or buildings down there, and those sorts of leaflets I remember them generally. I do

not remember exactly going out and looking into any one sent out by the Brotherhood.

We might have originally to look up the Brotherhood office, just to verify that there was such a place, or something like that, but they have been deluged with leaflets for the last ten years, "Communistic Cooperatives," and "Communistic Cooperative Association," and some other co-operative thing, and lots of them of that kind that you can pick up any day that they leave around Irving Place any time, just dozens of them.

Q. Were these leaflets turned over to you by the 986
company? A. Some of them were.

Q. Were these leaflets turned over to you by the company? A. Some of them were.

Q. When they were turned over to you by the company, what were they turned over to you for and what were your instructions? A. Just, "Who is this outfit?",

S. M. 257

or "Who are they?".

Q. To find out about it? A. Yes.

Q. Did you send a report to anybody? A. Yes.

Q. To whom? A. To Mr. Smith. 987

Q. When you had them there in 1936, when you were last working for the company were you doing that same type of work? A. We did some of it in 1936; yes, sir.

Q. Let me show you some leaflets and ask you if you ever saw any of them? A. Yes.

Q. I will pass that for the moment. When you would make your report on the leaflet, or make the report of what your investigation covered, would you investigate every person whose name appeared on the leaflet? A. Most of them did not have names and that is why we investigated it.

Q. And when his name appeared on it, did you investigate it? A. We—when do you mean?

Q. When you would make your report on the leaflet, or before making your report, would you investigate every person whose name appeared on the leaflet? A. As I said to you before, most of them did not have names. That is why we would investigate them.

S. M. 258

989 Q. When his name appeared on it, did that stop the investigation? A. The "Gas Plant" leaflet, after reading it very closely, we found these two men's names down in the bottom of it. It was just in a very little bit of a place, and we saw Bucks and Solosy's name and then we just checked up on that and investigated them a little bit.

Q. What about the others? A. The others do not have names on them.

Q. Would that leaflet be turned over to you by the company? A. Would what?

Q. Would that leaflet be turned over to you by the company? A. It would.

990 Q. And what were your instructions? A. To find out what is back of the thing and who is doing it. In that case the company did not realize that these two men got it out.

Q. Did you make an investigation of the leaflet that was signed by Mr. Solosy? A. Yes, sir.

Q. What was that investigation? A. Well, the first thing was to find out who was doing it, and I had to look on the leaflet to find out who the men were who were getting out the leaflet. When I looked on the leaflet I

S. M. 259

saw who it was.

991

Q. The company was not very resourceful in that instance; they did not really know how to find that out? A. Well, they needed me because I was the investigator and I found out by looking on it and immediately I knew it, but they did not realize who it was.

Q. You say he was shadowed, Mr. Solosy was shadowed? A. Yes, he was.

Q. You say he went home one night? A. He did.

Q. One evening he went over to New York? A. Yes.

Q. That is all you did? A. We shadowed for a couple of days those fellows to see what they did.

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Q. What else did you do? A. That is all.

Q. What kind of a report did you make? A. I made a report that Mr. Solosy was not doing anything out of the ordinary. He came over to town once and he went to the country and Mr. Ewing was more active. He gave out some of the circulars to the gas men working down there.

Q. Mr. Solosy was active? A. He was not as active as Mr. Ewing was. He came over there once or twice to Mr. Ewing's house and went back home. I think he

S. M. 260

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went over there just once.

Q. He was not so active? A. He was connected with him. His name was on the leaflet.

Q. And you pointed that out to the company? A. I pointed out the names on the leaflet, yes, sir.

Q. How about the leaflets that were gotten out by Mr. Wertzing? A. I did not know about them. I do not recall them.

Q. Mr. Grulich—do you recall the literature which was being distributed in 1935 and 1936 which was signed by Mr. Grulick? A. No.

Q. You do not? A. No.

Q. How long did you continue to investigate those leaflets? A. Well, it was not a continuous job, it was whenever they showed up, some stranger, some one that we had not seen before and we picked them up.

Q. How much did you receive from the company for the work that you did over the period of time that you were employed by the company? A. The whole time from 1933 to 1936, $55,000.

Q. $55,000? A. $55,000.

Mr. Moscovitz: That is all.

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S. M. 261

Trial Examiner Gates: Cross examine.

CROSS EXAMINATION:

Q. (By Mr. Ransom) Are you—you spoke, Mr. Strader, about work that you did from time to time for the company in connection with meter jumping or stolen electricity? A. Yes.

Q. Did that in anyway involve directly or indirectly labor organizations or organization employees? A. Oh,

996 no, no, no, that was racketeers.

Q. Was there a situation which existed during the period of your employment by reason of which various consumers of electricity and gas were induced by persons not connected with the companies to put on devices which produced under-estimates or under-metering of the amount of electricity which they used? A. Why, they even went so far as one fellow had a service to come in and take your meter and turn it back and seal it back again with counterfit seal.

Q. Did you work only with electricity or also with respect to devices for stealing gas? A. Not only gas, no, we did not do any work on the gas.

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Q. You were only, from time to time, dealing with instances of stolen current? A. Yes, sir.

Q. That was a confidential work as detective-opera-

S. M. 262

tive wholly unrelated to any labor matter? A. Unrelated with it at all; no relation with it at all.

Q. Can you state for the record your impressions as to whether that practice of stealing electricity by these devices on the meters was extensive and a considerable source of loss to the companies? A. Very much so, yes, sir.

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Q. Do you know whether or not, during the period as to which you testified there were various instances which were prosecuted in the court? A. Yes.

Q. For the stealing of gas or the stealing of electricity? A. Yes, sir, we got a whole gang.

Q. Did your work from time to time during this period constitute detective work to find out who were responsible for the circulation and the sale of these devices for stealing electricity, which was placed on the meters? A. That was our work to find that out.

Q. You spoke about detective work that you did in connection with sabotage and threatened injury to plants and property and the continuity of operations of certain of the companies who are respondents here? A. Yes.

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Q. Were there instances in 1935 and 1936 in which the destruction of company property and destruction of

S. M. 263

company buildings and necessarily the destruction of the company's ability to continue service was endangered by the actions of persons? A. Yes. Mr. Smith called me down and showed me a bunch of letters and he said to me, "Strader, the most important thing this company

1000 has to do is to produce and give a service", and he said, "This kind of stuff we cannot pass over." This was after this darn wild man had tried to wreck the plant.

Q. Was there an instance of actual destruction? A. Yes. Thomas O'Shannesy and a fellow by the name of Quinn who was there and when, after drinking around, and talking and threatening for months that—what they were going to do, and how they were going to upset the service, they got in and tried to do it.

Q. Is the Hudson Avenue station a large generating
1001 station? A. It is the largest generating station in the country according to my understanding.

Q. Were these two men actually apprehended in the act of wrecking that station? A. They were recognized at the time. There was no case made against them for a little time but later they were convicted and served prison terms for it.

Q. Do you know whether or not, as a result of the investigation which you made as to the actual activities of these men and their relationship to the threatened

S. M. 264

1002 destruction of the Hudson Avenue Station, do you recall whether or not they were convicted after a trial or whether they pleaded guilty? A. I believe that when they went right up to the trial, they pleaded guilty.

Q. In any event they were given actual jail or prison sentences? A. Yes.

Q. For this sabotage of this large generating station? A. Yes.

Q. Was that the only instance in which your inquiries related to actual or threatened destruction of property that would have prevented the company from continuing service? A. No.

Q. What else? A. We worked on the Hell Gate prop-

osition, and that was one that was never cleared up yet, but we believe it will be. I have never found out how it happened, but it looked to me as though it was sabotage, but I would not say it was because we never proved it was. It was a shortage of a bus bar.

Q. Was there any instance in the Borough of Queens, the New York and Queens Electric Light and Power Company where your men investigated a threatened destruction of property? A. No, there was a letter re-

S. M. 265 1004

ceived that someone was going to throw a steel rope or a chain over one of the sub stations—one of the open sub-stations in Queens.

Q. (By Mr. Moscovitz) When was this? A. I could not say, and it had not occurred to me until he mentioned Queens specifically. It was over a year or more ago. They had one sub-station there. I cannot tell you right now just where, where the high tensioning wires were out in the open, and some of the radicals were threatening to short them at that point.

Q. (By Mr. Ramson) With respect to this pulling of switches and other damage at the Hudson Avenue station, did your men investigate the responsibility for that, for some continued period of time? A. Yes, quite a while. 1005

Q. Did you understand your employment and the reason for your employment related to that development of the threatened prevention of continuity of service? A. That was the only reason for it that I know of.

Q. You spoke of the fact that the men who were finally apprehended and who later, as you recall it, pleaded guilty of the offense, were president and secretary or some other officers of Local union of the so-called Brotherhood? A. One of them was an official of it anyhow.

1006 Q. Was that investigation related to them because they were Brotherhood officers or members or because

S. M. 266

you were employed to find out who had endeavored to destroy a great generating station and stop electrical service in a large part of this city? A. The threats to the sabotage and the sabotage itself was the only reason of the investigation of those fellows.

1007 Q. Do you happen to know whether the amounts of money which were recovered by reason of these investigations and prosecutions on stealing of current exceeded the amount which you stated were paid by the company. A. Not definitely, but I understand that there were several cases where they recovered very large amounts, over $1,000 in some of them.

Q. Well, in any event you have not been employed, or your agency has not been employed by any of these respondent companies for any service since some time in October of last year? A. We have not, no, sir.

Judge Ransom: I think that is all.

1008 Mr. Moscovitz: Does your Honor desire to take a recess at this time?

Trial Examiner Gates: I suppose we may as well unless Mr. Ransom desires to continue.

The Witness: I would appreciate it if you could finish with me now.

Mr. Ransom: Then I would suggest that we finish with the witness now, if that is agreeable.

S. M. 267

Trial Examiner Gates: Perfectly.

Mr. Moscovitz: Certainly.

The Witness: I would appreciate it because I have a lot of work to do today.

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REDIRECT EXAMINATION:

(By Mr. Moscovitz) Do you have any undercover men in attendance, or did you at the Brotherhood Convention in 1935? A. In 1935?

Q. Yes. A. I am pretty sure we did not. Where was that convention? Do you know?

Q. I do not know. A. I am almost sure.

Q. I have been informed it was at Providence, Rhode Island. A. No sir, we did not.

Q. Did you ever cover any of the Brotherhood of Utility Employees Conventions? A. Not the conventions, we did cover some of the meetings.

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Q. Some of the meeting? A. Yes.

Q. To what period of time did those meeting coverages extend? A. Well, it was a time, the time we were working on this particular Brooklyn thing, I imagine it was almost for a year.

S. M. 268

1935? A. I would not want to say positively, I imagine it was that time, but I would like to look up the dates to be sure.

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Q. And your best recollection would be 1935? A. Yes.

Q. Did it extend into 1936? A. No, not until then.

Q. It did not? A. No, we were not interested in the meetings after the fellow was convicted.

Q. To what fellow or fellows are you referring? A. Tom O'Shannessy who was vice president of the union over there.

Q. What other meetings of the Brotherhood did you cover outside of that? A. Some one in that connection. We were trying to get this fellow and there had been a whole lot of talk on this thing over there and that was what we were trying to do.

1012 *Foster Strader—For N.L.R.B.—Redirect*

Q. Was there strike talk at that time? A. I do not recall it.

Q. Were you called in to investigate the strike talk? A. No sir.

Q. Did you, during that period of time have any large number of men employed in the Consolidated Edison System? A. Large number?

S. M. 269

1013 Q. Yes. A. At one time, no.

Q. Did you have any number? A. Well, we have had as high as approximately three or four at a time.

Q. Did you have as many as 18 at a time? A. I would be almost sure we never did.

Q. Did you ever have as many as eighteen in the Brooklyn Edison? A. No, no.

Mr. Ransom: I object to the question unless the matter is related to the peeriod not later than July 5.

Mr. Moscovitz: That is all. I have no further questions.

1014 Q. (By Mr. Cohn) In connection with the strike—

Mr. Ransom: I object to the question.

Mr. Cohn: Wait until I finish the question.

Mr. Ransom: I object to it. I object to any participation of any one who is not a party to these proceedings, as far as I know there are only two counsel in this case who are entitled to be heard and one counsel on behalf of the government, who is the Regional Labor Board attorney, representing the complainant, the Regional Labor Board herein, and the other is counsel for these respondents appearing specially.

1015

Mr. Cohn: I submit that we are parties of interest here. Our appearances have been entered here and we are attorneys for the complainants

S. M. 270

who originally filed the charge and we would like to be heard.

Judge Ransom: May I suggest that orderly procedure requires that this proceeding proceed in the usual way.

1016

Trial Examiner Gates: Normally examination will be conducted by one attorney, and I will sustain the objection.

Mr. Cohn: Exception.

Mr. Moscovitz: That is all.

Judge Ransom: That is all.

(Witness excused.)

Judge Ransom: I move that we adjourn until 2:15.

Trial Examiner Gates: Is that all right, Mr. Moscovitz?

1017

Mr. Moscovitz: Certainly.

Trial Examiner Gates: We will adjourn until 2:15, (Whereupon an adjournment was taken until 2:15.)

1018 *Stephen L. Solosy—For N.L.R.B.—Direct*

S. M. 271

AFTERNOON SESSION

Trial Examiner Gates: Proceed, gentlemen.

STEPHEN L. SOLOSY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

1019 Q. (By Mr. Moscovitz) What is your name? A. Stephen L. Solosy.

Q. Your address? A. 2213-24th Street, Astoria.

Q. By whom are you employed at the present time? A. I am not employed at present.

Q. How long have you been unemployed? A. Since January 17, 1936.

Q. By whom were you employed on January 17, 1936? A. Consolidated Gas Company of New York.

Q. That was your last date of employment with that company? A. That is correct.

Q. You have not worked since? A. No.

1020 Q. How long did you work for the Consolidated Edison Company? A. I never did work for the Consolidated Edison.

Q. Excuse me, Consolidated Gas, did you say? A. Yes.

Q. How long did you work for the Consolidated Gas?

S. M. 272

A. Well, the period I worked there is split up. I first started to work there, I think, in the beginning of October, 1928. That period ended in the end of November, 1928. Then I was rehired subsequently, January 3rd, I believe, 1929, and that employment period ended January 17, 1936.

Q. What kind of work did you do when you were first employed by the company? A. I was employed in a testing capacity, in district testing stations.

Q. Is that in the laboratory? A. That was laboratory work.

Q. Were you always employed in the laboratory? A. No, the first period I was.

Q. Yes. A. Subsequently, on being re-hired, I was put in a plant laboratory of the Astoria Light, Heat & Power Company.

Q. Yes. A. Where I did laboratory work for, I 1022
should say, four months. After that I went into instrument work and have worked on instrument for from that time.

Q. Were you working on instruments when you were last employed? A. Yes.

Q. What is work on instruments? A. Specifically, my title was Thomas Calorimeter Inspector.

S. M. 273

Q. What does that mean? A. That means maintaining, servicing, repairing, overhauling of that particular instrument. 1023

Q. What is that instrument? A. It is a recording calorimeter.

Q. What does it record? A. It records the BTU content of gas.

Q. What did you receive in pay at the time you were first employed? A. I started with $20.

Q. How many hours a week? A. I think it was five and a half days. I think that came to 38 hours.

Q. And did you receive any increases during the period of time you were employed until January 17th? A. I received increases all along regular intervals.

Q. Tell us about the intervals of increases. A. Well, after I was rehired, I was rehired at $20, and then, on

being transferred to instrument work, I received an increase of $2.50, then, about six months later I received an increase of $5. Then, I can't say, I think about two years later, I received another increase of $2.50.

Q. Well, at the time— A. The period is not finished.

S. M. 274

Q. Excuse me. Go on. A. Then, subsequently, I should say in 1934—no—wait a minute—1935, I believe it was, I received a five dollar increase, which was final.

1025 Q. So that when you were last employed you received $35 a week? A. Not quite. It came to $33.54.

Q. $33.54? A. Yes.

Q. Well, how do you quite figure that out? When you say you received $20, then a $2.50 increase, then a $5 increase, then another $2.50 increase, how do you quite figure that that way? A. The only way I can interpret that is that my services must have increased in value—

Judge Ransom: I move to strike out the answer as improper and not competent, highly self-laudatory.

1026 Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) I figure it at $35. You have it down to $33. A. That is because of the cut. You see, if there had been a reinstatement of the cut, I would have been rated at $35.

Q. Was there a general cut? A. There was a general cut, I believe, in 1933.

Q. I see. And that was the reason. A. 10 per cent cut, was it? A. Yes.

S. M. 275

Q. Who was your immediate superior at the time

you worked on instruments or during the period of time you worked on instruments? A. A person by the name of Harold Miles Roderick.

Q. Was he your immediate superior at the time of your discharge or lay-off on January 17th? A. Yes.

Q. Who was your superior before Mr. Roderick in your other work? A. A person by the name of William Baylis.

Q. How many men were employed on instruments in your last work? A. Well, if we take into consideration all the companies, on that particular instrument, 1028
I believe it is seven.

Q. Seven men throughout the entire system? A. Yes, that particular work.

Q. How many instruments were there of that nature in your particular company? A. Oh, my particular company, you mean the Consolidated Gas Company?

Q. Yes. A. Well, the Consolidated Gas Company embraced all of the companies, you see, in this particular phase of the work.

S. M. 276

Q. I see. A. All of the gas companies in the Con- 1029
solidated system utilized 27 of these instruments.

Q. And you say there are seven men who work on those instruments? A. There were. I don't know what it is at present.

Q. When you were last employed, there were seven? A. Yes.

Q. Did they all work in the same laboratory? A. No, we—when we started, we had one shop in which we did our repairing and overhauling. Then we had all the other men scattered over the system wherever the work was.

Q. What was the location of your work? A. Wherever I was assigned.

1030 Q. Where did you report? A. Our point of reporting was 15th Street, No. 4 Irving Place.

Q. Is that where all the men reported? A. Yes.

Q. Would you go from that point to your job? A. As a matter of fact, we didn't go there; we went wherever we intended to go directly in the morning.

Q. But did you get your instructions from 15th Street? A. We usually determined where to go.

Q. How would you determine that? A. By the nature of our work.

1031 Q. Would you determine it yourselves? A. Usually.

Q. Didn't the supervisor or the person to whom you were responsible give you any instructions as to the

time and place? A. Our work was more or less independent. While we were coordinated to a certain extent, most of our work was decided for us. We had certain territories to cover and reported daily on what we did.

Q. Would you report at 15th Street? A. Yes.

Q. Would that be at the end of the day? A. No, we

1032 would send in written reports by mail every night.

Q. Did you have any men working under you? A. Never.

Q. During the period of time that you were employed by the gas company, had you ever been reprimanded for inefficient work? A. Well, I suppose I have been reprimanded at times for various errors and such. That was usually in the beginning.

Q. In the beginning? A. Yes.

Q. When, if you recall, was the last time that you had been reprimanded for any inefficiency? A. I think

in 1930 once I was reprimanded, once for some ineffi-

ciency, for not getting the required accuracy in the instrument.

Q. You corrected that condition? A. Yes, to the best of my ability at that time.

Q. After that, you receive certain increases in your pay. Is that right? A. Yes.

Q. Can you tell us whether or not during the period of time that you were employed and received these increases, you received, were those increases any recognition of meritorious work? A. Well, nothing material, nothing that I can show proof for. 1034

Q. Any statement to you by your supervisors? A. Yes, at various times—

Judge Ransom: I object to it as highly incompetent and improper. In fact, it might be more proper to have somebody else describe the witness than to have him describe himself. In any event, it was long before the taking effect of the Wagner Act, not within any issue here?

Trial Examiner Gates: Objection overruled. He may answer.

Judge Ransom: Exception.

A. Usually if I asked for an increase in pay, I was told 1035 that my work was satisfactory in every respect.

S. M. 279

Q. (By Mr. Moscovitz) By whom were you told that? A. By this Mr. Roderick.

Q. When was the first time that he made such statement to you? A. Well, I should say a few months after I was engaged in this work. I remember asking him for more money and I asked him whether my work was satisfactory and he said yes.

Q. Do you recall when, after that, he made such a

statement to you, if any? A. Well, about the only time that ever came up is when I asked for more money. That is all I can say.

Q. Each time you made a request for more money, did you receive more money? A. Well, the last time I requested it the answer was that nobody is getting any more.

Q. When was that? A. 1933, 1934, during that period.

Q. That was the last time you asked for more money?

1037 A. Yes, I asked quite a number of times during that time, but the answer was that no one would receive any more money until after the depression was over.

Q. Did you, after the depression, receive any more money? A. I received it during the depression.

Q. When was that? A. 1934.

S. M. 280

Q. You got another increase? A. Yes.

Q. Did you also get with that increase a statement from your supervisor that your work was satisfactory? A. Yes.

1038 Q. Who was that, Mr. Roderick? A. Yes.

Q. Did you receive any more? A. No.

Q. Between that time and the time you were laid off or discharged, were any statements made to you by your supervisor as to whether or not your work was satisfactory or unsatisfactory? A. Never.

Q. Were there any complaints registered against you for the work that you were doing? A. No.

Q. Did you receive notice that your employment relationship with the company was to be terminated on January 17th? A. Yes. Officially, I received notice of it about half an hour before I left.

Q. That was the first time? A. Yes.

Q. Who gave you this notice? A. My direct superior.

S. M. 281

Q. Mr. Roderick? A. Yes. I was called in and he told me that due to certain conditions, my employment was terminated.

Judge Ransom: Is that what he said? Did he say, "due to certain conditions?"

The Witness: I said due to certain conditions. 1040
If you want me to give the certain conditions, I could give them.

Judge Ransom: I move to strike out the witness' statement. It is his own statement. He was asked to give what the conversation was.

Trial Examiner Gates: It may stand, but the witness may relate what the conversation was.

A. Well, my best recollection of it was that when I came in he said that "due to the shutting down of the 'A' Plant in the Astoria Light, Heat & Power Company, it would be necessary to put off some of the men, that I was the one to be let go in this particular division." 1041

Q. Any further statement by him? A. Well, I pressed him for more details, but he said, "You know more about it than I do."

Q. Did you ask him what he meant when he said, "You know more about it than I do"? A. No, I did not.

Q. Did he give you any other reason, or further reason? A. No.

S. M. 282

Q. After you pressed him for more details, and he made the statement to you, that you have already given,

1042 was there any further conversation between the two of you? A. Well, he wanted to know what I would do in the future.

Q. What kind of work you were going to do? A. Yes, what I intended to do in the future, and where he could get in touch with me if necessary.

Q. Did you feel that you were laid off, or did he tell you that you were discharged? A. It is hard to say. That is one of the points I pressed him for. I told him, "Do you think some day I will be able to get back?"

1043 And he said no.

Q. Did you—did you press him further on it? A. Well, no, I did not press him much.

Q. Now, the "A" plant in Astoria, what is that? A. The Astoria Light, Heat & Power Company consists of one plant in Astoria. That plant is divided into four sections; each section being a plant in itself. They are designated by "A" and "B," "C," and "D" plants. The "A" and "B" plants were coal gas plants, and the "C" and "D" were water gas plants. The "B" plant had been shut down before I had ever come to work for the gas company and the "A" plant, which was a coal

1044 gas plant, had been operating all along.

Now, for some reason they decided to shut down the

plant.

Q. Did they shut it down? A. Yes, as far as I know.

Q. Is it still shut down? A. I couldn't say.

Q. When did you learn it was shut down? A. While I was working there.

Q. Had not been shut down while you were still employed? A. I couldn't say.

Q. Do you think it was shut down after you left? A. That is possible.

1045

Q. Do you know? A. No, I don't know definitely.

Q. But in any event, that was the reason given for your lay-off or discharge? A. Yes.

Q. Has your superior or supervisor communicated with you since that day? A. No.

Q. Have you been requested to come back to work since that day? A. No.

S. M. 284

1046

Q. Do you know whether or not a new man was taken on to do your work? A. Well, as far as that goes, about a year before I was put off—

Judge Ransom: I move to strike that out. It is wholly unresponsive. I object to the witness arguing this case. He can answer the question.

Q. (By Mr. Moscovitz) Was a new man taken on to do your work? A. Subsequent to my being fired?

Q. Yes. A. No.

Q. Was there a man taken on at any time before you were discharged who took your place? A. Yes.

Q. When? A. About a year before I was fired.

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Q. Was that his first year with the company? A. No, he had been doing chemical work in another part of the particular plant which I was in.

Q. But had he ever done work on instruments before? Do you know what his length of service was with the company? A. I couldn't say for certain except that it was shorter than mine.

Q. Shorter than yours? A. By about a year.

S. M. 285

Q. By about a year? A. Yes.

Q. Did that man take your place? A. I think so, yes.

1048 *Stephen L. Solosy—For N.L.R.B.—Direct*

Q. Do you know whether or not at the time you were discharged there was plenty of work to be done on instruments? A. There was sufficient work—

Judge Ransom: Objected to as incompetent, calling for a conclusion.

Trial Examiner Gates: He may answer, stating the basis.

A. There was a sufficiency of work.

Q. (By Mr. Moscovitz) Will you explain what you
1049 mean by a sufficiency of work? A. Well, there had been as much work as there had been previously and I know all along as long as I had been there we had always managed to keep going.

Q. Was there any indication to you or anyone that the work on instruments was going to be decreased? A. Quite the contrary. It was my belief that there was going to be an increase.

Q. From what sources did you arrive at that conclusion? A. Well, mostly rumor.

Q. Things that you had heard? A. Yes.

Q. Can you tell me whether or not there has been an
1050 increase in your work since you were last employed by the company? A. It is my understanding, I can't give

it as a fact, that there has been an increase, that some of the testing stations have been equipped with these particular instruments whereas before they had not been.

Q. In other words, there are some more testing stations? A. No, these are testing stations which had previously utilized only manually controlled calorimeter, whereas now they have these automatic calorimeters.

Q. Do you know how many men are now presently employed as testers on instruments? A. I couldn't say.

1051

Q. You don't know. Were any other men who worked on instruments discharged or laid off at the time you were discharged or laid off? A. Not while I was there.

Q. As far as you know you were the only one? A. Yes.

Q. Do you know whether or not new men have been taken on since you were discharged or laid off doing the same work? A. I do not.

Q. I see. Do you know whether or not any of the persons who remained in the employ of the company who worked on instruments had more service with the 1052
company than you? A. I know that some of them had more service. I think four had more service and two had less.

S. M. 287

Q. Now, are the two who had less service, persons who are still employed? A. Yes.

Q. Was the one man who came to work on instruments a year before your layoff or discharge one of the persons who makes up the two that you have just described? A. Yes.

Q. Who was the other man? A. Well, the other man 1053
is a man by the name of Roecker.

Q. How long had he been working on instruments? A. He started in 1931. That would make it six years now.

Q. Had he been in the company before then? A. Shortly.

Q. Do you know whether or not there had been interruption in the continuity of employment of the remaining seven? A. No, not that I know of.

Q. When you first went to work for the company were you a member of any labor organization? A. No.

Q. Did you, after going to work for the company become a member of a labor organization? A. Yes.

1054 Q. What labor organization? A. Well, first was the Federation of Architects, Chemists, Engineers and Technicians.

S. M. 288

Q. Is that affiliated with the American Federation of Labor? A. Not that I know of.

Q. An independent organization? A. Yes.

Q. Did it exist in any companies outside of the Edison, the Consolidated Edison Companies? A. Yes, I
1055 know it was more or less of a craft organization. It had its main membership in the C.W.A. at that time.

Q. How long were you a member of that labor organization? A. Well, I suppose in a way I still am. I never resigned.

Q. Never resigned? A. No.

Q. Were you an officer of it? A. No, I was not.

Q. Did you belong to any particular local? A. I think there was only one organization at that time.

Q. Yes. And what was the date of your affiliation with this organization? A. I couldn't say exactly, some time in 1934, I believe, early 1934.

1056 Q. Did you, after becoming a member of this organization, become a member of any other labor organization? A. Yes. I subsequently became a member of the Brotherhood of Utility Employees.

Q. Do you recall when you became a member of that

S. M. 289

organization? A. I would say late in the spring of 1934.

Q. And were you a member, or did you become subsequently an officer? A. I was always a member, never an officer.

Q. Were you a member of any committees? A. Not that I know of.

1057

Q. Were you a trustee or did you hold any official position? A. Well, as far as I know I held no official position.

Q. Was the Brotherhood an independent organization? A. Yes.

Q. Did it have members in companies outside of the Consolidated Edison System? A. I believe at that time there was a national set up and there were locals which had members in other companies.

Q. Do you know how long the organization had been in existence before you became affiliated with it? A. I 1058
am not certain.

Q. Do you know whether or not it was affiliated with the American Federation of Labor? A. At the time I was in, it was not.

Q. It was a purely independent organization? A. Yes.

Q. Did you at that time belong to the employee Representation Plan as well? A. Yes.

S. M. 290

Q. When did you become a member of the plan? A. When everybody became. 1059

Q. When was that, was it before or after you became a member of the Brotherhood? A. I believe it was afterwards.

Q. Soon afterwards? A. Some time around that time. It is possible that there was an overlapping there.

Q. Around the same period of time? A. Yes.

Q. Were you ever an officer, or did you ever hold any executive position with the E.R.P.? A. No, I was a member of the committee once but that's all.

Q. What committee is that? A. An investigating committee.

1060 *Stephen L. Solosy—For N.L.R.B.—Direct*

Q. How long were you on that committee? A. About three months.

Q. When was it that you served on the Committee? A. Well, the committee was appointed in November, 1934, and was discharged some time in 1935.

Q. And did you serve for a particular purpose to investigate some particular problem? A. Yes, the—

Judge Ransom: Objected to as wholly immaterial to any issue here. There is no issue tendered here in the complaint as to the employees

1061

S. M. 291

representation plan. This is a matter outside of the complaint and outside the period of the Wagner Act, unrelated to any issue tendered.

Mr. Moscovitz: Well, I simply have to say generally in this line of objections, Mr. Examiner, that the Board should have before it all of the facts pertaining to this man's activities in any labor organization, because the allegation in the complaint is that this man was discharged because of his organizational activity. If it so happens

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that his activity goes back to a period preceding the passage of the Act, I submit that it makes no difference because it is the whole continuity of activity which must be taken into consideration by the Board and if we find this continuity, it must be shown.

Judge Ransom: There is no complaint here. I submit that this employee, or any other, was discharged because of any activities under this Electoral system by which the employees chose their representatives for collective bargaining. The Employees Representation Plan was not a

company union as that term is understood. It was a method by which members of no labor organization voted and chose their representatives for collective bargaining. This man, along with many others, was evidently a member of other labor organizations, as he had a right to be.

Nevertheless, as an employee, he voted for whomever he saw fit as the representatives of the

S. M. 292

employees for collective bargaining. There is no 1064
issue made here whatever against that system of choosing representatives for collective bargaining, no issue claiming that this man or any other was ever discharged because he participated in any activity of that Electoral system.

Trial Examiner Gates: You may answer the question.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) The question was what was the purpose for which this committee was set up by the Employee Representation Plan? A. The committee was 1065
set up to investigate the company union.

Q. Investigate your own organization? A. To investigate the Employee Representation Plan.

Q. You mean the officers of the Employee Representation Plan set up a committee to investigate its own activity? A. It was done by our own department. We voted to have this committee investigate the Employee Representation Plan.

Judge Ransom: That was not a committee then of the Employee Representation Plan? Who created the committee, your department?

1066 *Stephen L. Solosy—For N.L.R.B.—Direct*

The Witness: This committee was elected in our department at a departmental meeting.

Q. (By Mr. Moscovitz) Was it elected by the mem-

S. M. 293

bership in the department? A. By a majority of the membership.

Q. Were you then to report to the membership in your department? A. We were.

1067 Q. Did you make such an investigation? A. Yes, we made a complete investigation and filed regular reports.

Judge Ransom: Move to strike out the witness' characterization of what he did, and I move to strike out his whole answer on the ground that it has no bearing on this case, outside any issue here, too remote, not within the period of the Act, or the complaint.

Trial Examiner Gates: Motion granted but the witness may state the extent of his investigation, if he wishes.

1068 A. Well, the investigation proceeded on the basis of first investigating the activities of the members of the general council primarily, then also investigating the set up of the plan, its origin, who drew it up, what caused its inception, and our reports were on that basis.

Q. When did you make your report, do you remember? A. I couldn't say.

Q. Was it at the end of— A. The first report was read at a meeting of January 4, 1935. That I know. But the others I couldn't state.

Q. Who was the chairman of the investigating committee? A. B. B. Ewing.

S. M. 294

Q. E-w-i-n-g? A. Yes.

1069

Q. Who else was on the committee? A. I was the secretary of the committee and there was one more member and I believe his name was Lalone.

Q. Ewing was chairman, you were secretary and this other gentleman was a member? A. Yes.

Q. Did your investigation take three months? A. Yes, I think it did take that much.

Q. Was it then that you submitted your final report? A. We submitted reports all along. Our first report, as I said, was submitted January 4.

1070

Q. What was that report? A. That was our preliminary report.

Q. What was the report? A. Well, it was a four-page typewritten report. It dealt mostly—

Judge Ransom: I object to his stating the content of the report. It is certainly not the best evidence and besides, I submit, with very great earnestness, that it is not possibly within the issue here. In the first place, it relates to a period before the Act; and in the second place it relates to a period which is not within the charge or within the complaint. The charge upon which

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S. M. 295

this complaint is based is quite definite. The complaint is not as definite, but, nevertheless the complaint can have no greater virtue than the charge. There is nothing in the charge which opens to inquiry the period prior to July 5, 1935. This concededly was. There is nothing in the charge and nothing in the complaint which alleges that any man, this man or any other, was laid off or discharged because of his activities under or in relation to the Employee Representation Electoral system. I submit that certainly, under the

1072 decisions of the courts, an administrative body like this Labor Board, acting quasi-judicially, must proceed upon some basis of paying heed to the limitations of time and subject matter of which it undertakes to give respondent companies notice of hearing, and I make the point specifically that this line of inquiry, like practically all of the inquiry that has so far characterized this hearing, is not within the complaint, not within the charge, and not within the period of the Act.

1073 Trial Examiner Gates: Objection overruled.

Mr. Ransom: Exception.

Q. (By Mr. Moscovitz) Were there any other committees set up during the period of time that your committee was in existence by the employees in your plant?

Judge Ransom: Do you mean his plant or his department?

Mr. Moscovitz: In your department?

S. M. 296

A. Not that I know of.

1074 Q. After your committee went out of existence was there any other committee set up in your department to inspect any of the phases of the Employee Representation Plan?

Judge Ransom: Objected to as incompetent, irrelevant and not within the period of time alleged in the complaint. It is without the issues of the charge or the complaint.

Trial Examiner Gates: Read the question.

(Question read.)

Trial Examiner Gates: If the question is directed to the witness' participation, it may be answered.

1075

A. No.

Q. (By Mr. Moscovitz) The answer is no? A. That's right.

Q. During the period of time that you were engaged in this investigation, you were also a member of the Brotherhood, is that right? A. That is correct.

Q. Did you continue your membership in the Brotherhood? A. Yes.

Q. Until what time? A. Well, I believe until the time—wait until I think of the correct words—until it was reorganized.

1076

Q. When was that? A. I am not certain of the exact date.

S. M. 297

Q. About when in relation to your discharge? A. Some time in the spring of 1936.

Q. Now, until reorganization and while you were a member of the Brotherhood, did you engage in any Brotherhood activities? A. I did not get that.

Q. While you were a member of the Brotherhood? A. Yes.

1077

Q. Did you take an active part in its business? A. Well, if organizing is to be considered as active business I would say yes.

Q. Were you one of those engaged in organizing for the Independent Brotherhood? A. Yes, I was. I was not an official organizer, but I was doing organizing work.

Q. What was this organizing work which you were doing? A. Our organizing work consisted mostly in putting out publications and passing out these publications at the plant gates and at the various offices and in interviewing employees of the company.

Q. When did you first start that kind of activity? A. I believe in March, 1935, openly.

1078 Q. March, 1935? A. Yes.

Q. And when you say "openly", what do you mean?

S. M. 298

A. I mean that before that we had not come out openly as members of any labor organization.

Q. Was it then in March of 1935 that you first let the world know that you were members of the Independent Brotherhood? A. Not exactly. That was the time
1079 we first let the company know we were doing active organizing work.

Q. Did you disclose at that time that there was an Independent Brotherhood in existence? A. Yes.

Q. And when you say that you disclosed then for the first time that you were doing active organizational work, do you mean that you disclosed it by writing to the company or simply by your physical activity? A. Well, both, I should say, because I recall in one instance at that time I passed out papers at the Astoria works gate and the gate keeper came out and requested my name and I gave it to him.

Q. Who else was engaged with you in this work?
1080 A. B. B. Ewing.

Q. Is that the same Mr. Ewing that was chairman of the investigating committee? A. It is.

Q. Did this activity that you were engaged in have the approval of the independent brotherhood? A. I believe so.

S. M. 299

Q. Did they know you were engaged in it? A. Yes.

Q. Were you doing it on their behalf? A. Yes.

Q. Was this work that you were doing during or after working hours? A. Always after working hours.

1081

Q. And did you always distribute your leaflets openly at the plant gates? A. Yes.

Q. What gates? A. Practically every plant gate they had.

Q. Will you give us the location? A. The Astoria works which are situated near the river.

Q. Astoria, Long Island? A. Yes. There is the Ravenswood Works on Vernon and Webster Avenue, Long Island City.

Q. Yes. A. And Hunts Point gas works. That is in the Bronx, Hunts Point Road, Bronx.

1082

Q. Yes. A. And various other offices, the addresses of which I couldn't say off hand.

Q. Were you and Mr. Ewing alone engaged in this distribution of leaflet work? A. Not entirely.

S. M. 300

Q. Who did you have with you? A. I don't know them by name. They are merely casual acquaintances.

Q. Did you hear Mr. Strader testify this morning? A. Yes.

Q. Were you here all during the time he was on the stand testifying? A. Yes.

1083

Q. You heard all of his testimony? A. I did.

Q. Did you hear him testify that in the month of March, 1935, he inquired into certain leaflets that you had distributed? A. Yes.

Q. What was the name of the leaflet that you distributed? A. It was a paper, not a leaflet. It was entitled "The Gas Man".

Q. Did you hear him make a reference to the "Gas Man" this morning? A. I did.

Q. Is that the paper? A. It is.

Q. How often did you circulate these papers or distribute these papers? A. We attempted to publish it once every month.

1084

S. M. 301

Q. When did you first start, in March? A. In March of 1935.

Q. How long did you continue the distribution of this paper? A. It continued until November of 1935.

Q. What time in November of 1935? A. Well, the issue was for November and that was the last issue.

Q. Well, was it issued, was it circulated the 15th of November, or the 1st of November or the 30th? A. Well,

1085 we had no formal circulation plan. We just went ahead and circulated it as best we could.

Q. Was it being circulated during the whole month of November? A. Yes.

Q. Or the early part of when? A. Throughout November.

Q. Throughout November? A. Yes.

Q. Do you have any recollection as to when you stopped your circulation during that month? A. No.

Q. Can you tell us what the purpose of this publication was?

Judge Ransom: Objected to as immaterial,

1086 wholly incompetent, not within any issue here, and not a proper method of proving any fact germane.

Trial Examiner Gates: Overruled.

S. M. 302

Judge Ransom: Exception.

A. The purpose of the paper was to gain membership for the Brotherhood of Utility Employees. The Brotherhood we were organizing for.

Q. Did you, during the period of time you were circulating this newspaper, secure membership in the Brotherhood? A. We did.

1087

Q. You and Ewing? A. Yes.

Q. By personal solicitation? A. Yes.

Q. Did you secure few or many? A. Well, it depends on the meaning of the word.

Q. Tell us exactly then how many, if you recall? A. Roughly, twenty-five.

Q. Twenty-five? A. Yes.

Q Was that through the combined efforts of both of you or was that the number you secured yourself? A. That was the combined efforts.

Q. Was it secured at the gates? A. No.

1088

Q. Did you follow up on your desire to secure membership by discussing the question with employees other places? A. Yes.

S. M. 303

Q. At their homes? A. In some cases, yes.

Q. Did you, and Ewing voluntarily stop the newspaper publication in November, 1935? A. I wouldn't call it voluntary. It was involuntary mostly. We just couldn't help ourselves. It was too much work.

Q. Too much work? A. Yes.

Q. Were you getting this up yourself? A. We were.

1089

Q. Did you, after the cessation of publications continue, however, your organizational activity? A. No, I would say not.

Q. You stopped? A. Yes.

Q. Do you recall when it was that the independent brotherhood reorganized? A. I don't know the date.

Q. Had they reorganized before November, 1935? Or after November, 1935? A. Oh, much afterwards.

Q. Was it after you were discharged? A. Yes.

Q. So that at the time of your discharge, you were still a member of the Independent Brotherhood? A.

1090 *Stephen L. Solosy—For N.L.R.B.—Direct*

S. M. 304

Yes.

Q. What was its full name? A. The Brotherhood of Utility Employees of America.

Q. Without the "Independent", is that it? A. Yes.

Q. Was there a particular local that you belonged to? A. I belonged to Equity Local first and later it was transferred to the Queens Local.

Q. Do you know how many locals there were? A. In New York, I believe there were three.

1091 Q. What was the one that you belonged to at the time of your discharge? A. The Queens Local.

Q. Was that local comprised of employees only of your company? A. No, there were employees of the Consolidated Gas System, but to be more specific they were employees of the New York and Queens Electric Light and Power Company.

Q. Between November, 1935 and January 1936, when you were discharged, were you engaged in any Brotherhood of Utility Workers activities? A. Yes.

Q. What was that activity? A. As I have explained before, it was mostly organizing work.

1092 Q. Did you secure new members after November, 1935? A. I couldn't say for certain. It is possible.

S. M. 305

Q. How much of your time did you spend in an effort to secure membership for the Utility Workers? A. Practically all my time except what I gave to the company.

Q. When you say all of your time except what you gave to the company, do you mean that you organized during or after working hours? A. After working hours.

1093

Q. Do you recall—when you say all of your time, do you mean all of your evenings and all of your afternoons after you left work? A. Yes.

Q. Were you working then in conjunction with anybody else? A. B. B. Ewing.

Q. B. B. Ewing? A. Yes.

Q. Did you make reports to any of the officers of the Utility Workers Union during this period of time? A. You mean the Brotherhood?

Q. Yes. A. The newspaper work that we did was under the control of the publicity committee of the New York Local. That was called Equity Local, and naturally we had to have conferences with them before we could publish our paper.

1094

Q. Who was at the head of that department? A. Nielson.

S. M. 306

Q. Where was he employed? A. Probably New York Edison.

Q. Who else would you confer with? A. He was the one in charge of that committee.

Q. Did you ever come in contact with Mr. Grulich in this work? A. Oh, yes.

1095

Q. Was he also engaged in publicity? A. He was.

Q. Was he a member of the Equity Local? A. No, he was a member of the Queens Local.

Q. Did you discuss with him your program? A. No, not at that time we did not.

Q. Did you at any time before your discharge discuss with him your program? A. We never had any formal discussion.

Q. Were they informal discussions? A. Yes.

Q. Were they discussions that you had at regular

S. M. 307

meetings? A. No, they were purely informal.

Q. Would you go to consult with him, or would he come to see you? How would you get together? A. We would meet at various meetings.

Q. Yes. A. Or at the meetings of the executive committee.

Q. Yes. A. That was as far as it went.

Q. Was there any one else outside of yourselves in your department who was actively engaged in this or-

1097 ganizational work for the Brotherhood? A. No.

Q. You were the only one? A. Well, I didn't quite get that question.

Q. Was there any one else employed in your department? A. Yes.

Q. Actively engaged in this organizational work for the Brotherhood? A. Yes, Ewing.

Q. Ewing? A. Yes.

Q. Was Ewing discharged? A. Yes.

Q. When? A. The same time I was.

S. M. 308

1098 Q. Both of you were discharged at the same time? A. Yes.

Q. January 17th? A. Yes.

Q. Was Ewing a tester of instruments? A. No, he was a testing station tester.

Q. Was he in the room when you were discharged? A. Yes, we got it simultaneously.

Q. Were you both there when each received the gate, so to speak? A. We were.

Q. Was there a reason given to Mr. Ewing for his discharge?

Judge Ransom: O object to the question and

move to strike out the testimony that has been given as to Mr. Ewing's being laid off. It is not within the complaint, not within the charge, not within the complaint as amended. No issue is tendered here under the notice of hearing of which these respondents have been apprised with respect to Mr. Ewing.

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.

A. To tell the truth, I was listening to the reason given to me, so I couldn't listen about by some one else. 1100

Q. You spent your time concentrating on your problem; is that it? A. No, that is not the point. We each

S. M. 309

had a different supervisor. They were both present and each was getting his story.

Q. (By Mr. Moscovitz) Did you at any time after November, 1935, and before January 17, 1936, when you were discharged, become an officer of the Brotherhood? A. No.

Q. Have you been employed elsewhere at any time since your discharge? A. Well, if you can call New York State an employer, I would say yes. I had a week of jury duty. 1101

Q. Is that the only employment you have had? A. That is all.

Q. How much did you make that week? A. $15.

Q. Is that the only income you have had since your discharge from work? A. Well, I have had odd work on my own, but the loss was always greater than my income,—

Judge Ransom: I move to strike out the answer and ask that the question be answered.

1102 *Stephen L. Solosy—For N.L.R.B.—Cross*

Trial Examiner Gates: Please read the question.

(Question read.)

Trial Examiner Gates: Answer that question.

A. I believe I answered it, because in any business venture an income is the remainder left after your expen-

S. M. 310

diture is figured out.

1103 Trial Examiner Gates: Perhaps you will explain a little more clearly.

A. Well, I went into a business. I tried my hand at chicken farming, and the way it turned out, we invested a certain amount of time and money, and when we got through we had less than what we started with, besides our time expended.

Q. (By Mr. Moscovitz) So the only money you made is that $15 you were testifying about? A. Actually, yes.

Mr. Moscovitz: That's all.

1104 *CROSS EXAMINATION*:

Q. (By Mr. Ransom) Mr. Solosy, you entered the employ of the Consolidated Gas Company when? A. Early October, 1928.

Q. And in what capacity? A. As Junior tester.

Q. What was your payroll title at that time? A. Junior tester.

Q. That is, in 1928, when you went with the company, you started as a junior tester? A. That's right.

Q. That was your payroll title? A. Yes.

S. M. 311

Q. How long did you remain junior tester following 19— A. I have no way of telling.

1105

Q. When were you first laid off by the company? A. In November, 1928.

Q. And you were later re-engaged? A. Yes.

Q. Now, when you went to the company how old were you? A. 18.

Q. And—you mean fully 18? A. No, probably a few months short of 18.

Q. During all your employment by the company, you were in what is known as the chemical department; were you not? A. Not the entire time.

1106

Q. Well, during what—did you enter in the chemical department? A. I did.

Q. Were you in the chemical department when you were laid off the last time? A. The last time, yes.

Q. During what part of your employment for the company were you in any department other than the chemical department? A. I was an employee of the Astoria Light, Heat and Power Company from January 3, 1929 to some time in May of 1929.

S. M. 312

1107

Q. In what department? A. So far as I know there is no department. That one plant has no department.

Q. What work were you engaged in doing? A. Chemical.

Q. What? A. Chemical.

Q. And so that during some time in 1928, or sometime in 1929 after you had been reemployed, your reemployment was by the Astoria Company, also in the

S. M. 313

chemical department? A. That is as close as you can come to it.

Q. What? A. I deny, though, that I was in the chemical department of the Astoria Light & Power Com-

1108 *Stephen L. Solosy—For N.L.R.B.—Cross*

pany because I am not certain that it has a chemical department.

Q. Your work was in the laboratory of the Astoria plant in Long Island City? A. Yes.

Q. And that is where the chemical tests and the calibration of instruments and the like is done at the Astoria plant? A. Yes.

Q. And your re-employment, after your first lay-off, was by the Astoria Light, Heat & Power Company at that plant? A. Yes.

1109 Q. And then later you were re-employed in the chemical department of what was then under the name of the Consolidated Gas Company of New York? A. I wouldn't say re-employed, transferred.

Q. Transferred from the Astoria Company? A. Yes.

Q. Now, as a matter of fact, Mr. Solosy, the Astoria Company is what might be called the manufacturing, the gas manufacturing department of the Consolidated Gas Company, wasn't it? A. Not accurately. There

S. M. 314

was one of the manufacturers—it was one of the manu-
1110 facturers that the Consolidated Gas Company had.

Q. Now, at the time that you went with the company, and for some years after that, the principal gas manufacturing plant of the Consolidated Company, and of the Consolidated Company system, was the Astoria plant? A. Again, that is a matter of opinion.

Q. I mean, referring to size. Let us take only that. A. Possibly it is correct. I don't know what the output of all the plant was, but Hunt's Point, plus the other plants of the Consolidated system would have possibly equalled that of the Astoria Light, Heat & Power Company.

1111

Q. I ask you if you have any knowledge or recollection as to when the Hunt's Point plant to which you referred went into commercial operation. A. I have no way of telling.

Q. You have no idea? A. No.

Q. Was it in operation in 1928? A. Yes.

Q. The Hunt's Point plant? A. Yes.

Q. The Hunt's Point plant was engaged in commercial production in gas throughout, then, your period of employment with the company? A. It was.

1112

S. M. 315

Q. You said that the Astoria plant was made up of four units? A. Yes.

Q. Two were coal gas and two were water gas? A. Yes.

Q. And do you know whether the Astoria plant, at the time you were employed, and for some time thereafter, was one of the largest gas manufacturing plants of the system, as well as of the world? A. Yes.

Q. And until the Hunt's Point plant was placed in operation, do you know, whatever date that was, which you say you do not know, but, until that time at least, 1113
wasn't the Astoria plant by far the largest gas plant in the city of New York and in the Consolidated system? A. I don't know, but I have no statistics on that subject.

Q. You haven't any impression on that? A. Impression, yes, but not absolutely knowledge.

Q. But, isn't it your impression that it was? A. Yes.

Q. The largest? A. Yes.

Q. By far. Now, are you able to inform the Examiner as to whether, during the period of your employ-

S. M. 316

ment,—I am not suggesting you had any relation with,—

1114 but whether it is not true that during the period of your employment there has been quite a steady decrease, general decrease, in the quantity of gas sold to consumers in the Borough of Manhattan and other parts of the city, so far as the city is served by the Consolidated Gas group of companies? A. Again I have only hearsay evidence on that matter, that there was a decrease in the amount of sales in gas.

Q. And is it your impression and understanding that that decrease in the volume of business continued
1115 through the period of your employment and was constant? A. I couldn't say it was constant. I simply don't know.

Q. Well, don't you know that it did keep going down practically year by year during the period? A. I had no access to any figures which would denote that.

Q. I am asking you whether that was not your understanding of the business in which you were engaged. A. I simply do not know.

Q. And had no impression about it? A. Impression is not knowledge. As I explained before, there was a diminution in sales. That is what I heard.

1116 Q. Well, let's look at it this way: When you went there, how many units of the Astoria plant were in operation? A. Three.

S. M. 317

Q. Which ones were they? A. "A," "C" and "D."

Q. At that time, then, there were two coal gas units and one water gas unit in operation? A. Yes.

Q. Before you went to the company, what had happened to the "B" coal gas unit in Astoria? A. I don't know.

Q. And it had been dismantled, had it not? A. Its use was discontinued.

1117

Q. Its use was discontinued? A. When I was there it was not dismantled. It was placed in "stand-by" condition.

Q. It wasn't operated at the time you were there? A. No.

Q. What took place as to any of these units during the period of time you were there? A. They were operated.

Q. The "A" unit was operated up to about the time you left? A. I believe so, yes.

1118

Q. And do you know, or isn't it your understanding that the decision was made that the "A" unit, the other coal gas unit at Astoria, was no longer needed, and would no longer be operated? A. Whether it was needed or not, I don't know, but I know there was a decision to shut it down.

S. M. 318

Q. Do you know that the company proceeded to close down and stop the operation of the Astoria unit? A. Yes.

1119

Q. Now, when you came with the company, you went into the chemical department? A. Yes.

Q. And you were then, you say, just under 18 years of age? A. Yes.

Q. Were you a graduate chemist? A. No.

Q. Had you had any technical educational training whatever? A. At that time, no.

Q. What had been your education? A. I was a high school graduate.

Q. That meant three or four years high school. A. Four years.

Q. That was all? A. Elementary school, too.

Q. By the way, where were you born? A. New York.

Q. And you went with the company as a laboratory

1120 assistant, at what rate of pay? A. I said I went with the company as a junior tester, at $20.

Q. Well, you are quite sure about that; are you? A.

S. M. 319

About what?

Q. That your occupation and your payroll standing was that of junior tester when you went with the company? A. I know this, that on my personnel record

1121 which I saw, I was first rated as a junior tester.

Q. I want to be entirely fair with you. Aren't you referring to the period after your first lay-off? A. No, I do not think so.

Q. Is it a fact that you went with the Consolidated Gas Company as a laboratory assistant for $20. a week? A. What rate—

Q. $20? A. You might call my work—what you might call my work, I do not know, but that was not my title.

Q. And what rate; was it your rate of pay? A. My rate of pay?

Q. Yes. A. My rate of pay was $20.

1122 Q. $20? A. Right.

Q. Is it true that you were— A. I beg your pardon.

Q. That after this lay-off you were later re-employed by the Astoria Company in its Works Laboratory again

S. M. 320

as a laboratory assistant? A. The nature of the work could really have gone as a laboratory assistant, but they certainly never called me that.

Q. You say your personnel record was what? A. I saw the one I had with the Consolidated Gas Company.

Q. Is it a fact that when you were transferred, as you

said, to the Consolidated Gas Company, in 1929, that you then became, for the first time, a junior tester, at the rate of $22.50 per week? A. When I was transferred?

Q. Yes. A. What my rate was at the time of the transfer I do not know, but the nature of my work was not such as to entitle me to that particular rating.

Q. Which particular rating when—which particular rating were you not entitled to? A. I was not entitled to a junior tester. I was not doing that type of work.

Q. Did you do work as a junior tester for the Astoria Company? A. I do not know what my rating was in the 1124
Astoria Company.

Q. You never knew what your payroll title was? A. The only title I had on the payroll was a number.

Q. Answer my question, if you can, please. A. Yes.

Q. You did not know what your payroll classification was? A. No.

S. M. 321

Q. No? A. No.

Q. As a matter of fact, the Astoria Laboratory was not a part of the chemical department of the Consolidated Gas Company, was it? A. No. 1125

Q. It was not? A. No.

Q. You came back to the Consolidated Edison Company after this lay-off and then a period of employment with the Astoria Company as a junior tester? A. I never worked for the Consolidated Edison Company.

Q. Well, the Consolidated Gas Company, one of the Consolidated Companies? A. Yes.

Q. You did? A. Yes.

Q. Your capacity was that of a junior tester? A. I believe at the time of transfer I must have been put back with that title.

Q. What was that. A. I believe at the time of the transfer I must have been put back with that title.

1126

Stephen L. Solosy—For N.L.R.B.—Cross

Q. Your rate of pay was $22.50? A. What?

S. M. 322

Q. Your rate of pay was $22.50? A. Yes.

Q. It was? A. Yes.

Q. When were you put on this work of testing or inspecting the Thomas Calorimeter? A. Well, I can only give you an approximation of the time I did the work with the Thomas Recording Calorimeter.

1127

Q. Have you any idea? A. Yes.

Q. When, as to when? A. Yes.

Q. When? A. From 1929.

Q. 1929? A. Right.

Q. That is, testing on the Thomas Recording Calorimeter? A. The Thomas Recording Calorimeter, yes, sir.

Q. Just what is the Thomas Recording Calorimeter? A. The Thomas Recording Calorimeter is a recording instrument designed to record—to determine and record the calorimetric content of gas.

Q. Are they instruments which are taken out on the "district," as they say in the gas business to the vari-

1128

S. M. 323

ous places for the purpose of testing the qualitative, caloric content of the gas, both quantitatively and qualitatively? A. They are not.

Q. Are they used anywhere except in the chemical laboratories? A. Until recently they were not used in the chemical laboratories.

Q. What do you mean by "recently"? A. There was one—the chemical laboratories do this work, whereas the Thomas Recording Calorimeter is definitely an industrial instrument. It was used at plant and holder sta-

tions, but comparatively recently was used in laboratory work.

Q. When did you say your inspections or tests with the Thomas Recording Calorimeter were made? A. That would range all over the city with the exception of the Bronx, except in one case.

Q. What case? A. I did that work at the Central Union Gas Works, 138th St., in the Bronx. Outside of that, I did work in Manhattan, at various stations, and also in the Queens.

Q. Did you do any in Brooklyn? A. Brooklyn? 1130

Q. Yes. A. No.

S. M. 324

Q. Richmond, the Borough of Richmond? A. No.

Q. No? A. No.

Q. Only a small part of Queens, is that the idea? A. I should say a part, but I would not say a small part.

Q. You would not say a small part of the Borough of Queens? A. No.

Q. Where—were you only in one of the several wards? A. In three of the wards.

Q. What was that? A. There were three different 1131 locations.

Q. In Long Island City? A. Astoria, Long Island.

Q. Ravenswood? A. Yes.

Q. You were? A. Yes.

Q. That would be in Long Island City? A. Yes.

Q. It would? A. Yes.

Q. Anywhere else? A. Yes, Bellrose.

Q. Bellrose? A. Yes.

S. M. 325

Q. Were your instructions that you should make in-

spections with the Thomas Recording Calorimeter while you were in the field? A. My work was never field work. We always worked indoors.

Q. Your work was wholly indoors? A. Yes.

Q. What was your title after you started in with the Thomas Recording Calorimeter? A. After I started?

Q. Yes. A. I do not know of any particular time that my title was changed. My title at the time I saw it, at a particular time, I have forgotten when, was the grade on which my rating was, which was Thomas Re-
1133 cording Calorimeter inspector.

Q. Is it a fact that you were first, after your transfer to the chemical department, following your first lay-off and then reinstatement, that you were first a junior tester? A. On my first reinstatement, I believe so.

Q. You were? A. Yes.

Q. You were a junior inspector of the Thomas Recording Calorimeter? A. Yes, I then followed that form of inspection with the Thomas Recording Calorimeter at the time—

S. M. 326

1134 Q. What was that? A. Maybe I didn't understand your question.

Q. My question was, simply this: Then, you were a junior inspector of the Thomas Recording Calorimeter? A. I should have been, yes, from the inspection until the time following what you call my lay-off.

Q. Were you ever raised or promoted to any position beyond that of junior inspector of Thomas Recording Calorimeter? A. There was never any formal notice ever given to me of any change in my status as far as title is concerned.

Q. As far as you know, up until the time that you were laid off in January of 1936 you were still a junior

inspector of the Thomas Recording Calorimeter? A. I believe I was an inspector of the Thomas Recording Calorimeter, yes, sir.

Q. Do you know— A. Well, as I said before, on the one occasion, I cannot recall right now just when it was, I saw a card on which my rating was inspector of Thomas Recording Calorimeter.

Q. But you would not be surprised to find that you never reached a higher standing or employment rating than that of a junior inspector? A. I would not, ever, be surprised to see what rating I would have been listed 1136 under.

Q. You spoke about your increases and decreases in pay? A. Yes.

S: M. 327

Q. In 1930 you said your weekly pay reached what amount? A. In 1930 I believe my pay was $27.50.

Q. Was that raise in 1930, or was it adjusted to $30.00? A. That may have been at the end of 1930 or the beginning of 1931. I suppose you mean was that raise, in 1930, adjusted to the figure of $30.00?

Q. That is right. A. As I said, that may have been 1137 in 1930 at the end of the beginning of 1931.

Q. You spoke of a reduction of pay which was made approximately 8 1/3 per cent in amount. Was any connection with a reduction in hours in order to spread the work in connection with the NRA? A. That I cannot answer.

Q. Was there a reduction in hours, and was it an 8 1/3 per cent reduction? A. There was, yes.

Q. That was as of what time? The Fall of 1933 or the summer of 1933? A. I could not say for certain.

Q. In other words, the company, in your department, cut the working hours to 35 hours per week on the "Spread-the-work" idea? A. Yes.

1138

S. M. 328

Q. In connection with that, there was an 8 1/3 per cent reduction in pay? A. Yes.

Q. Has 35 hours still as far as you know, and was it during the time of your employment set as the hours of work in that department? A. Yes, it was.

Q. As far as you know, it still is? A. I do not know.

Q. That had the effect of cutting your pay, as junior inspector, to $27.50? A. Yes.

Q. For 35 hours per week? A. Yes.

1139

Q. Do you recall whether or not in the month of April of 1934 as part of the general adjustment that half of the 8 1/3 reduction in pay was restored to all employes below officers and heads of departments? A. Well, I do not know the date—I did not hear the date as you stated it.

Q. I said, do you know that as of April, 1934? A. Yes.

Q. Was 4 1/6 per cent; that is, half of the original reduction on the "spread-the-work" program was restored without an increase of hours? A. Yes, without

1140

S. M. 329

an increase of hours.

Q. Do you know whether or not later the other 4 1/6 per cent that had been taken off was restored? A. I never received it.

Q. That took place after you had been laid off? A. That is possible.

Q. In any event, there had been an adjustment in your pay as junior inspector in 1934 by which you received not $28.75, but $33.54 per week? A. Yes.

Q. You said several times that from the period since you were laid off on January 17, 1936, that aside from

the income that you did not receive as expected profits from a chicken farm, you had no income? A. I did not. I said I got $15.00 for jury duty.

Q. Leaving out the juries and leaving out the chickens, that is it, is it? A. Yes.

Q. Are you quite sure about that? A. Yes.

Q. I ask you whether or not it is not true that after you were laid off in January of 1936, on January 17th or January 18th you did not receive from the Consolidated Edison Company a separation allowance on the basis of one week of pay for each year of service? A. 1142

S. M. 330

I received that from the Consolidated Gas Company.

Q. That was paid to you after you had been laid off on January 17, 1936? A. I would not say that because I received it before the termination of my employment.

Q. Let us be perfectly accurate about it. Was it not true that, or first, let us get at this way: When was it now that you say your termination took place? A. My employment terminated on January 17th and I received the money on January 17th.

Q. You are as sure about that as you are about the 1143 other matters you have testified to here? A. Am I as certain about having received that money on January 17th?

Q. Yes. A. Yes, I am certain of it.

Q. And on that basis that you received as a separation allowance one week for each year of service, which amounted to pay at your full rate of pay to and including the week of March 7th, 1936? A. You mean it would have come that way?

Q. Yes. A. Yes, that is one way of putting it.

Q. Well, it covered that period? A. How could it

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cover that period? It was a sum of money allowed to me when I was discharged.

Q. Or laid off? A. Discharged.

Q. Upon your separation from work you received as a separation allowance $234.78, if you do not recall the exact amount, I would not hold it— A. Something like that.

Q. You do not challenge the amount? A. No, so, roughly, it is in that neighborhood.

1145 Q. You are sure that you received that on the day that you were separated from work? A. Yes.

Q. How was it paid to you? A. Well, I received credit slips from my immediate superior and I went down to the cashier and presented those credit slips in due form and they were paid out to me.

Q. Who gave you the credit slips? A. I am not quite certain on that point. I know that the secretary had to handle them because they had to be signed by the department head and assistant department head, or one or the other.

Q. Of the company or of your department? A. Of

1146 that department.

Q. Have you any idea who gave you these credit slips? A. I cannot be certain on the slips, but I know

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that I had to get them from my immediate superior.

Q. And who was he? A. H. M. Roderick.

Q. Then, before he gave you the credit slips, they had to be approved by somebody else? A. As I remember now, the secretary made them out but they were not to be approved until I turned in my case of tools and identification card.

1147

Q. You proceeded to do that that day? A. Yes.

Q. Then this was the same that you had been told that you were laid off? A. Yes.

Q. Do you recall whose approval aside from that of your immediate superior you had to get? A. Of what?

Q. Of the credit slips? A. I do not recall who signed them, that may have been either the department head or the assistant department head.

Q. But, in any event on this day when you were laid off you got your seven weeks' pay; namely, a separation allowance of one week for each year that you had been in service? A. Yes.

1148

Q. By the way, are you married? A. I am not.

S. M. 333

Q. You spoke about this committee that existed in the chemical department. A. Yes.

Q. That all took place in 1935, did it not? A. The committee work, no.

Q. Yes? A. No, it started in 1934 and went into 1935.

Q. Well, it was wound up early in 1935? A. Yes.

Q. It did not continue after that; the committee was discharged, you say? A. Yes, the committee was discharged.

1149

Q. That was purely a committee in the department? A. Yes.

Q. In the chemical department of the Consolidated—was that called, the Consolidated Gas Company? A. Yes.

Q. It was? A. Yes.

Q. You spoke about the reorganization of the Brotherhood of which you are a member at the time of your discharge as taking place after your discharge. What did you mean by "reorganization"; a change in

1150 *Stephen L. Solosy—For N.L.R.B.—Cross*

name? A. Partly. At that time it was talk that was going on of affiliating with the American Federation of Labor.

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Q. What did take place as the reorganization of the Brotherhood? A. You mean what actually took place?

Q. Yes. A. I was not present when it took place.

Q. Do you know? A. No, not definitely.

Q. Have you any idea? A. My ideas may not be the
1151 same as the facts.

Q. You do not know what the present name of the Brotherhood organization is? A. Yes it is the Utility Workers Union.

Q. What? A. The present name of the organization which is in the field covering the Consolidated Gas System is the "Utility Workers Union," an affiliate of the C.I.O.

Q. That change of name and affiliation is what you meant as the organization—reorganization of the Brotherhood of Utility Employees? A. No. I did not say that. I mentioned in my previous—

1152 Q. (interposing) You spoke about the reorganization of the Brotherhood? A. Yes.

Q. What reorganization took place? A. At that time there was talk—

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Q. (interposing) I am not talking of the talk. I am talking of what did take place. You called it a "reorganization." Was it really a reorganization? What was the reorganization? A. That reorganization was the affiliation of that brotherhood with the American Federation of Labor.

1153

Q. Did they affiliate? A. Yes.

Q. The Brotherhood of Utility Employees? A. Yes.

Q. Did you by virtue of that, become a member of the American Federation of Labor? A. No.

Q. Why not? A. Because I was not in town at the time.

Q. Were you not a member of the organization which was reorganized and affiliated with the American Federation of Labor? A. Yes.

Q. Yes? A. Yes.

1154

Q. Did that make you, thereby, a member of the American Federation of Labor? A. Well, I did not take out a membership card.

Q. Did your, what you might call, or what you do call the Queens Local of the Brotherhood, become a

S. M. 336

part of the American Federation of Labor? A. I could not say for certain.

Q. What? A. I could not say for certain.

1155

Mr. Moscovitz: Mr. Examiner, in all of this testimony which comes after the discharge, I will have a witness as to the period of the discharge or the lay-off of this witness, a witness regarding the reorganization. I had intended and do intend to go into that upon another witness' testimony. I think that it will be helpful to point out at this time that this witness had his relationship with the company terminated in January, 1936, you see, he did not continue in the company's employ thereafter, probably we could get at those facts better through another witness.

Judge Ransom: Well, it is certainly within the scope of the cross-examination as to what he

1156 called the reorganization of which he spoke on his direct testimony.

Mr. Moscovitz: I am not objecting to that. I am merely calling your attention to the way I intend to offer this proof.

Judge Ransom: I did not anticipate that you would object to testimony of this character, because it is obviously admissible.

Trial Examiner Gates: Proceed.

1157 Q. (By Mr. Ransom) Do you know whether this Queens Local of which you at one time had a part was

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at any time affiliated with the American Federation of Labor?

Mr. Moscovitz: I object to that question, Mr. Examiner. I do not know that this witness stated that he had at any time become a member of the Queens Local. It is my recollection that he testified that he did not. I think that should be developed.

1158 Judge Ransom: I withdraw the question for the moment.

Q. (By Judge Ransom) When did you resign from the Queens Local of the Brotherhood? A. I never resigned.

Q. Are you still a member? A. Of a non-existent organization?

Q. Of a reorganized organization, as you put it? A. When the organization no longer exists you cannot have membership in it.

Q. But if it reorganizes under any other name or form? A. After the metamorphosis?

Q. You may want to quibble with me but I am not quibbling with you? A. No.

Q. Did you, after your discharge, continue as a member of any labor organization? A. No.

Q. You are sure about that? A. With this qualifi-

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cation that after awhile, about two weeks after being laid off or discharged, as I say, I continued going to meetings of the Queens Local.

1160

Q. What was that other labor organization that you mentioned you belonged to? A. Federation of Architects, Chemists, Engineers, and Technicians.

Q. As far as they are concerned, you are still a member? A. Yes, in a way, I suppose I am, although not in good standing.

Q. You have not kept up your dues, you mean? A. No, not for two years.

Q. You have not gone to any meetings? A. No.

Q. No? A. No.

Q. You were a member of that during 1934, 1935, and part of 1936? A. Permit me to explain that I was, I signed up with them, with that particular organization as a member and went to a couple of meetings and saw it was not the organization I wished to belong to, consequently I joined the Brotherhood.

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Q. Can you fix the time when you joined the Brotherhood? A. It was in the spring of 1934, that is the best I can do.

Q. That was before this setting up of this system upon which there was an arrangement whereby the employees voted by secret ballot to elect their representa-

1162 tives? A. Whether it was before that or not, I do not know because they were both about the same time.

Q. You participated in the process of nomination and election in your department in the company under the system I have reference to? A. Yes.

Q. You never resigned from this Federation of Architechts, Chemists, Engineers and Technicians or whatever it was? A. No.

Q. Did you ever resign from the Brotherhood? A. No.

1163 Q. How do you fix two weeks after you were laid off as the termination of your membership? A. I do not fix it, I merely state to you that time as from that time on I was no longer in town.

Q. As a matter of fact are you not still a member and do you not consider yourself still a member of the present organization? A. I do not hold a membership card.

Q. Do you consider yourself a member? A. Well, I

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cannot see how. I cannot because I am not in that par-

1164 ticular industry.

Q. Have you here any copies of this paper that you spoke about, the "Gas Man," or I believe the title of it was the "Gas Worker"? A. I have not.

Q. I believe the witness this morning referred to it as the "Gas Plant," but I understand from your testimony that it is the "Gas Worker"? A. I do not have a copy of it here. That is the right title.

Q. That was published quite openly and above board, and above your signature? A. Except the first issue.

Q. The first issue was when? A. In March.

Q. Of 1935? A. Yes.

Q. March, 1935? A. Yes.

1165

Q. The first issue published over your signature was in April or the latter part of March? A. Either April or May, sometimes because sometimes in there we skipped an issue.

Q. You wound that project up and stopped that publication early in November, 1935? A. We did not wind

S. M. 341

it up. It was stopped by our discharge. That is the reason why it stopped.

1166

Q. Were you discharged in November, 1935? A. We brought that paper out as often as we could get it out, but we were delayed and we could not, but we intended to bring it out whenever we could. We were at work on the formulation of that paper when we were discharged.

Q. Were you going to get out another issue? A. Yes.

Q. That is your testimony now? A. Yes.

Q. You did not mean to say to Mr. Moscovitz that the publication of that paper was ended in November? A. I never said it was intended to be ended. I said, it ended.

1167

Q. I see. But, in any event after March of 1935, your activities in behalf of the Brotherhood as well as your activities in behalf of the employees representation plan or system of using that method— A. I beg your pardon sir, I did not hear you.

Q. In any event after March of 1935, your activities in behalf of this Brotherhood as well as your activities in behalf of the Employees Representation System of choosing collective bargaining representatives you said

S. M. 342

was openly made known to the company? A. Yes.

1168 *Stephen L. Solosy—For N.L.R.B.—Cross*

Q. You did at that time and after that continue activities both in the Brotherhood and under the Employee Representation Plan? A. Yes.

Q. About how many members were there to your knowledge of this Queens Local of the Brotherhood during your period of activity in it? A. I do not know. I never had access to the records.

Q. Have you any idea how many? A. Well, at some of the meetings there must have been easily 200.

Q. 200? A. Right, 200.

1169 Q. And you say that was the largest number you ever saw, or wouldn't you make that statement? A. Yes, at any one time.

Q. At other meetings, like most organizations, the attendance was less? A. Yes.

Q. The largest you ever saw at any meeting was 200? A. That is my best estimation. I did not count them at that time, of course.

Q. Yes, it is just an estimation. I am not holding

S. M. 343

you to any mathematical count. I understand that. A.

1170 That is right.

Q. Did you ever attend any other meetings of the Equity Local in Manhattan? A. Yes.

Q. Have you any idea of how many members there were in that Local or Brotherhood? A. Any idea?

Q. Yes. A. I would say in its hey day there was about 1200.

Q. How many did you ever see at a meeting? A. 300 as an estimate.

Q. Without holding you to the exact number, you would say about 800 was the largest you had ever seen? A. How many?

Q. 800. A. I said 300.

Q. 300? A. Yes.

Q. You say you saw about 300 and you would say that 300 was the most you ever saw at a meeting? A. Yes.

Q. Is it a fact, Mr. Solosy, that in this chemical department personnel that many men who were your junior in service as well as some who were your seniors in ser-

S. M. 344

vice were laid off or transferred or retired in connection with and by reason of this reduction in the volume of work? A. As far as I know, when I was laid off, there was no one who was or had seniority over me who was fired. 1172

Q. But those who were or, at least, among those who were junior to you, they had either been laid off or had been transferred? A. I do not understand your question.

Q. Were there not many of those who were junior to you that had either been laid off or had been transferred prior thereto or at the same time? A. Many?

Q. Yes. A. As far as I know, with the exception of people who were given temporary employment, there were none put off before me. 1173

Q. Well, let us see some of them. Among the men who were in the three-year class, did you know a Mr. Dinkfeld? A. Yes, sir.

Q. Was he laid off? A. With me?

Q. Yes. A. At the same time.

Q. Did you know a Mr. Mannheim? A. Yes.

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Q. Was he laid off? A. Yes, at the same time I was.

Q. Was Mr. Roecker laid off at the same time you were? A. Yes.

1174 Q. Did you know Mr. Ingram and Mr. Nordmeyer resigned? A. He resigned to take a better position, Mr. Nordmeyer did, while I was there, but Mr. Ingram was working there while I was there.

Q. You do not know whether he resigned? A. No.

Q. Speaking of Mr. Lalone, did he resign? A. Yes, to get a better job elsewhere.

Q. So far let us take the employees who were on the three year transportation and we have found there were three resignations and three lay-offs? A. Yes.

1175 Q. There being only two more employees in that category of the three year men. Now, did you know Mr. MacLeman? A. Yes.

Q. Mr. J. M. MacLennan? A. I beg your pardon, no. I could not say so.

Q. Did you know Mr. J. M. Terry? A. Yes.

Q. Were both J. N. MacLennan and J. N. Terry who were your juniors in service transferred out of the de-

partment for this same reason that led to your being laid off? A. I could not answer that.

1176 Q. Were they transferred out the department? A. I recall when Terry was transferred, the other I cannot say.

Q. You recall Terry was transferred? A. I did not say for the purpose that you stated.

Q. Well, he was transferred out of the department at about that time? A. Yes.

Q. Did you know Mr. D. L. Johnson? A. Yes.

Q. He was transferred out of the department, wasn't he? A. I believe into the sales department.

Q. Yes. A. Yes.

Q. Taking those of your own class, the six year men, you knew Mr. Henry Bishko? A. Yes.

Q. He was transferred out of the department, was he not? A. Yes, but you said he was in my category, he was not.

Q. Was he a man with six years of service? A. Oh, the time category, but he was not in the same line as I was.

Q. Not in the same functional line, but he was one of

S. M. 347

the six year men? A. Yes.

Q. Mr. J. J. Sheahan was another man in that office 1178
in the six year category? A. J. J. Sheahan?

Q. Yes. A. As far as I understand he went to the sanitarium with tuberculosis.

Q. He was separated from the payroll, was it? A. That is one way of putting it.

Q. Well, I am not discussing at the moment what was undoubtedly true, if he were ill, he had the sick benefits, but in any event he disappeared from the department work and off of the payrolls? A. Yes.

Q. That is your understanding is it? A. Yes.

Q. You spoke about Mr. Roecker? A. Yes.

Q. You spoke of Mr. Roecker having had an equal 1179
period of service with you? A. I said less.

Q. What? A. Less.

Q. That is the amount of Mr. Roecker's service with

S. M. 348

the Consolidated Gas Company, is it? A. With any affiliate of the Consolidated Gas Company.

Q. Your statement is that you are sure that Mr. Roecker did not have a longer period of service with some other company of the system? A. I know he definitely had no service with any Consolidated Gas affiliate that would entitle him to longer service than I.

1180 *Stephen L. Solosy—For N.L.R.B.—Cross*

Q. Mr. Ewing was also, first, he was, let us say, your junior in service, was he not? A. Yes.

Q. How many men, all told, would you say that there was in this chemical department of the Consolidated Gas Company who had, at the time of your layoff, who had six years' service or less? A. How many were laid off?

Q. No, how many were there; what was the total number of the employees in January of 1936 who had been there six years or less? A. That I could not say.

Q. You have no idea? A. No.

1181 Q. Who—how many were there in the whole department? A. Roughly, fifty.

Q. Fifty? A. Fifty.

S. M. 349

Q. Would you say that a quarter of them were men who had been there since you had? A. I could not say.

Q. You have no idea? A. No.

Q. You could not even give this Examiner and the Board any idea? A. If I started in and made a tabulation I probably could.

Q. Well, let us do that? A. All right.

1182 Q. There were not more than ten or twelve who had been there a lesser period of time than you? A. Yes. I cannot state that positively.

Q. You cannot give any impression on that? A. It would not be a very good one.

Judge Ransom: That is all.

Mr. Moscovitz: I would like to have a short recess.

Trial Examiner Gates: A five minute recess.

(Whereupon a 5 minute recess was taken.)

AFTER RECESS

Trial Examiner Gates: The hearing will come to order. Proceed.

Mr. Moscovitz: Do you have any other questions you want to ask the witness, Judge Ransom?

Judge Ransom: No.

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REDIRECT EXAMINATION:

1184 Q. (By Mr. Moscovitz) Mr. Solosy, were any of the men to whom Judge Ransom referred and about whom Judge Ransom questioned you, men who fell into certain year classifications engaged in the same kind of work that you were engaged in? A. No. The men that he asked me about were not engaged in the same type of work I was.

Q. Tell me who the president of the company was in which you were last employed? A. Frank W. Smith.

Mr. Moscovitz: That is all.

RECROSS EXAMINATION:

1185 Q. (By Mr. Ransom) Mr. Solosy, up until the time that you were laid off, had not six employees in the chemical department already been transferred or laid off? A. Six?

Q. Yes. A. I could not say.

Q. No? A. I do not think it was that many.

Q. At the time you were let out, did that not represent the transfer or letting out of six more? A. If you include me, yes.

Q. This was not a solitary letting off of you? A. No.

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Q. There were five others at that time? A. Yes.

1186

Q. Four of them immediately and two of them since the shutting down of the plant had been completed, which was estimated for March 1st, is that true? A. Yes.

Judge Ransom: That is all.

Q. (By Mr. Moscovitz) Mr. Solosy, how many men were there engaged in your kind of work? A. Seven.

Q. Seven. A. Yes.

Q Were there any men laid off who fell into the classification to which Judge Ransom referred and about

1187 which Judge Ransom has questioned you, who fell into the class of work done by you and the other seven men? A. Six?

Q. Yes, six? A. You mean in my line?

Q. Yes. A. No, there were none in my line.

Q. So then, it is so that out of all of those who had been discharged or transferred or went into institutions, or went to a sanitarium, they were none of them men who were engaged in work the nature of which you

S. M. 352

were doing with this instrument; is that right? A. Yes,

1188 sir.

Q. Therefore, this other list of men who had been discharged, transferred or sent into sanitariums or institutions, were in no case men who were engaged in or connected with the type of work on the Thomas recording calorimeter? Is that correct? A. That is true.

Mr. Moscovitz: That is all.

Q. (By Judge Ransom) Is it true that, Mr. Solosy, that after these layoffs and transfers that you spoke about or admitted, which I referred to as of the six year class and other classifications, there were first six before yourself and then six at the time that you were let out;

that the men who are left in the department were men who had either very much longer service than you or very much better chemical or technical training? A. I would not say that, no.

Q. Well, isn't it a fact that most of the men who were left in the department after these layoffs had much longer periods of service? A. Not all.

Q. Most of them anyway? A. Not nearly all of them, no.

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Q. Not nearly all of them? A. No.

Q. Well, let us say the majority, by far? A. Well, I will admit that.

Q. By far? A. The majority.

Q. Is it true that the men who had less service than you and those who are left in the department after the carrying out of the program for reduction in force in connection with the shutting down of the coal gas plant in Astoria were men referring now to the men that were near in service to you, and that were left were men who had technical and chemical training and education considerably in excess of yours? A. I am not competent to 1191 pass on that.

Judge Ransom: That is all.

Q. (By Mr. Moscovitz) They still were not men that were doing your kind of work? A. No, they were not.

Q. Do you know whether or not there was followed by the company in the layoffs or discharges which took place the seniority provisions for layoffs or discharges? A. That I do not know.

Mr. Moscovitz: That is all.

Q. (By Trial Examiner Gates) Did you state that

the number of employees in the chemical department was about 50? A. Yes.

S. M. 354

Q. Including all of the employees who were laid off prior to your layoff and at the time of your layoff? A. Yes, probably, not including the administrative staff.

Q. You were paid on a weekly basis? A. Yes, sir.

Q. Then you would include in the administrative staff who? A. Well, the department heads and the as-

1193 sistant department heads and the various men in charge of division like my own division for instance.

Q. In that division there were seven people including yourself? A. Yes.

Q. Were there any others with greater seniority than yourself? A. Four had more and two had less.

Q. In connection with this report on the employees Representation Plan you said the first report, the preliminary report, was January, 1934. Did you make any special report or official report of subsequent report? A. Yes, we made three, I believe, we made a final report, a subsequent report, official in nature, and three in all.

1194 Q. Can you state the date? A. No, I cannot.

Q. Can you state the approximate period that would cover? A. Well, I had one come up about February and

S. M. 355

a few more came out later.

Q. Was that in 1934? A. 1935. There were three altogether. One came out in February and two more came out later.

Q. That was during the spring of 1935? A. Yes.

Q. Can you state over how many months the period covered? A. For the whole investigation?

Q. Yes. A. Four or five months.

Q. (By Mr. Ransom) You say this was in the year 1935? A. Yes, sir.

Q. And during the spring of 1935? A. Correct.

Q. (By Trial Examiner Gates) It started in 1934? A. Yes, sir.

Q. It ended when? A. March, by March I should say.

Q. By March? A. Yes.

Q. You have heard testimony by Mr. Smith this morning what he testified to? A. Yes.

Q. Can you identify any of those instances? A. Very 1196
easily. I know the instances he mentioned as having

S. M. 356

taken place place several times. I called frequently on my colleague in this work, Mr. Ewing. That took place down on Irving Place.

Q. That is where Mr. Ewing lives? On Irving Place? A. Yes.

Q. You of course were not aware that you were being tailed? A. No.

Q. This paper that you put in "the Gas Man," were there any identifying marks on there on the first issue 1197
which was such as it would disclose your name or Mr. Ewing's name? A. Not on the first issue, no. That came out incognito.

Q. Was there any way in which Mr. Strader, the witness who testified could tell who published it? A. Not on that particular issue. The later issues had other names on it, our names on the editorial page.

Q. The later issues had your names on the editorial page? A. Yes, sir.

Q. (By Judge Ransom) You say Mr. Solosy, you started this publication, "The Gas Man," in March, 1935? A. Yes.

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Q. Is that the name of it? A. I believe it is.

Q. That was early in that month? A. I believe it came out early in the month, yes.

Q. This chemical department of which you were a

S. M. 357

member and which made—I refer to the chemical department committee of which you were a member and which made the several reports, were there any reports by that committee after you started publication of the

1199 "Gas Man"? A. I do not believe so.

Q. Those reports had been made and the committee of the department discharged before the paper was started? A. Yes.

Q. Was the first issue of the paper entirely anonymous? A. Well, after due thought I do not think you can call it entirely anonymous because if I recall the matter we put in the body of the matter—there was a place, and you must remember that I am recalling this after two years now, I believe that Mr. Ewing put his name and address in there some where as some one who could be contacted but there was no statement that he

1200 was definited connected with it, if I remember correctly.

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Q. Nothing to identify Mr. Ewing as a member of any labor organization? A. He said there, I believe, and this is just my recollection, you know, I believe he stated if any one wanted to get in touch with the union, that they could reach the union through him, and that he would put through their application or anything of that sort.

Q. That was in the first issue? A. Yes.

Q. But with respect to the editorial sponsorship, that came later? A. Yes.

1201

Q. As far as the sponsorship of the first issue was concerned, it was anonymous? A. Yes, I should say practically so.

Q. Well? A. I make this reservation because the name "Equity Local" was on the front of the page.

Q. That was on it somewhere? A. Yes, and obviously the inspiration must have come through there.

Q. There was nothing to identify it in reference to its publication? A. Except as I have stated before, Mr. Ewing's name.

Q. There was a printed statement in it if any one 1202

S. M. 359

wanted to get in touch with anybody in connection with the union they could do so by getting in touch with Mr. Ewing at his home address, was it? A. I believe his home address.

Q. His home address was on Irving Place? A. Yes.

Q. It was? A. Yes.

Q. He used the address in this paper to give the information that he could be reached there? A. Yes.

REDIRECT EXAMINATION: 1203

Q. (By Mr. Moscovitz) Was it in the next issue that your name appeared? A. Yes.

Q. That was in April? A. I do not know what date —whether we put out that in April or May, because I know that we skipped one of the month's issue at that time, so it may have been either April or May.

Q. April or May? A. Yes.

Mr. Moscovitz: That is all.

Judge Ransom: That is all.

Q. (By Trial Examiner Gates) Did you abandon

S. M. 360

"The Gas Man" prior to your discharge? A. Well, we had never abandoned it. We had never given up the thought of publishing it. We intended to put it out as soon as we could get the material together and the money to have it printed.

RECROSS EXAMINATION:

Q. (By Mr. Ransom) So you testified here this morn-
1205 ing that you gave up the publishing of "The Gas Man" early in November because it was too much work, did you not? A. I said that was one of the causes. You misunderstood me, I believe. I said it ended as a fact, but it was never voluntarily ended by us, and if our employment had continued the paper would have come out further.

Q. You did not say this morning that you gave it up because it was too much work or that it ended because its publication was too much work? A. As I remember, and I realize the fallibility of human memory, as I remember it, I said it ended and the reason that it came to an end because we had not the time to put into
1206 it, it was too much work, but that does not preclude the idea that later on we might continue it.

Q. Did you not intend this morning to give the Examiner the idea that you gave up the publication or intended to give up the project early in November be-

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cause its publication was too much work? A. Yes, and I still intend to convey that impression.

Q. There is no doubt in your mind, is there? A. No, sir, and I think I can best qualified to pass on that.

Judge Ransom: That is all.

Mr. Moscovitz: That is all.

Trial Examiner Gates: You are excused.

(Witness excused.)

(Discussion off the record.)

Trial Examiner Gates: We will recess until Monday at ten o'clock a. m. in the morning. If there are any subpoenaes out for attendance today, please return at that time.

(Whereupon, at 4:45 o'clock p. m., June 11, 1937, the 1208 hearing adjourned to Monday, June 14, 1937, at 10 o'clock A. M.)

1209

1210 S. M. 362

Minutes of Hearing, Held June 14, 1937

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER of 1211 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated companies, BROOKLYN EDISON COMPANY, INC., NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY, *Respondents*, and 1212 UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.	Case No. II-C 224

14 Vesey Street,
New York City, N. Y.,

June 14, 1937.

The above-entitled matter came on for hearing pursuant to adjournment taken June 11th, 1937, at 10:00 o'clock A. M.

Before:

ROBERT M. GATES, Trial Examiner.

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National

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Labor Relations Board.

WILL MASLOW, Esq., Attorney for the National Labor Relations Board. 1214

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers Local 1212.

Messrs. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City (By William L. Ransom, Jacob H. Goetz, and Pincus M. Berkson, of counsel) appearing specially for the respondent companies, reserving all objections to jurisdiction.

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Trial Examiner Gates: Proceed.

Mr. Moscovitz: Mr. Examiner, you will recall that last week there was some question raised by yourself regarding some questions in the complaint?

Trial Examiner Gates: Yes.

Mr. Moscovitz: And it was left for Judge Ransom and myself to discuss the matter after which we stated that we would take it up with you again.

First, I would like to bring to your attention that there should be a semi-colon after the word "solicitors" on the bottom of page 7. It is page 7, subdivision 3 of

paragraph 22. You will find the word "solicitors". There should be a semi-colon after that word instead of a comma. I understand there is no objection.

Judge Ransom: No objection.

In some of the copies it was that way and others did not have it, so I did not make a point of it at all.

Mr. Moscovitz: The question was raised by you, Mr. Examiner, on the 8-2 allegation. I erroneously stated that there was no 8-2 allegation that was before you. That statement was the result of certain revisions made
1217 of certain complaints before issuance, and confusion in my own mind at that point. A statement that I made concerning the absence of the 8-2 allegation, I wish to correct this morning. The complaint does contain an 8-2 allegation, as well as the regular 8-1 allegation. However, the

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paragraphs 23 and 24 have certain numerical references which should be changed and the changes would be in paragraph 23, the second line, from paragraph 18 to 21; from 17 to 22;

24 which will be changed from paragraph 18 to 21; to
1218 17 to 22.

Judge Ransom: For the respondents I may say that until Saturday noon I did not consider that or know that it was intended that allegations were a cause of complaint under Section 1, subdivision 2 of the Act, that is that they were intended to be in this case. I do not of course make any suggestion that there was anything except a misunderstanding on the part of what had been said between counsel in that respect. Certainly the complaint as it stood was ambiguous in that respect and I understood that it was not intended that the case should go to hearing with a question under section 8, subdivision 2.

1219

This application this morning for an amendment of which I had information on Saturday by bringing the allegations of paragraph 22 into the scope of the averments of paragraphs 23 and 24, which previously had contained no reference to paragraph 22, certainly have the effect, if they are granted, of bringing an 8-2 cause of action definitely into this case. Under the circumstances, although I realize the entire good faith of all that has taken place, I do not think that in behalf of the respon-

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1220

dents we should consent to the amendment. We reserve our previous objections, not only to the jurisdiction, but also to this broadening of the complaint under which we are proceeding.

Trial Examiner Gates: Do you care to put in the record, Judge Ransom, a copy of the complaint as served upon the respondents?

Judge Ransom: I do not raise that question. I think that the record sufficiently shows, and Mr. Moscovitz will not contest—in fact the record does not show the copy of the complaint which he put into the record, the first day shows, that paragraphs 23 and 24 of the com- 1221
plaint did not refer or bring within the scope of those paragraphs, the matter set out in number 22.

Mr. Moscovitz: The complaint makes an 8-2 allegation, and that complaint is in the record, and it is the same complaint which Judge Ransom has and which was served on everyone. The only thing is that the complaint did not make a reference to section 8-2 in the two paragraphs we have been talking about and which I have this morning moved to amend, so that the record will be complete therein.

Judge Ransom: Paragraphs 23 and 24 which are the essence of the cause of action here did not contain any

1222 *Proceedings*

reference up to this moment to paragraph 22 and consequently it did not appear that the complaint intended to

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bring in Section 8, subdivision 2 allegation in the paragraphs 23 and 24.

Trial Examiner Gates: We will go off the record.

(Discussion off the record.)

Trial Examiner Gates: Paragraph 22 has an allegation of section 8, subdivision 2?

1223 Judge Ransom: That is correct.

Trial Examiner Gates: 24 has. 23 is the only one which has not.

Judge Ransom: But 23 and 24 which were the essence and gist of the cause of action we were trying, does not contain a reference to paragraph 22 as a part of those causes of complaint, and I think I should say to your Honor frankly now that from the viewpoint of the respondents, although we contest the jurisdiction of the Board broadly, we shall, if this motion is granted, submit respectfully two further objections to the proceedings.

1224 In the first place, if this proceeding is broadened so as to involve direct attack upon the labor organization which these respondents have recognized as the collective bargaining agency or such of their members as belong to that labor organization; and if the complaint is by this amendment broadened so as to involve a direct charge of outlawry against that labor organization, under the terms of subdivision 2 of Section 8 of the Act, we shall make the point, and ask Your Honor to rule, that there

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is a defect of *parties* in this proceeding. We do not believe that this Labor Board would be proceeding according to law in entertaining a section 8 (2) cause of action against the International Brotherhood of Electrical

1225

workers in hearings to which that labor organization is not a party and of which that labor organization has not had due notice or an opportunity to be heard.

To my mind it seems elementary that the labor organization which is attacked under Section 8 subdivision 2, is a necessary and indispensable party to valid proceedings. I shall also make the point that if the complaint is allowed to be amended so as to bring within its scope in paragraphs 23 and 24 a section 8 subdivision 2 cause of action, or that the complaint is not sufficiently definite and certain and is not in adequate form to make 1226
its charge definite so as to give the respondents and other necessary parties due information of the charge brought by the administrative board of the government.

I mention those things now because I think Your Honor should have them in mind in passing upon the allowance of this amendment. If this is a section 8-2 proceeding, it is invalid from its inception for defect of *parties*, I submit.

Trial Examiner Gates: Until the exhibits are here, I believe that point cannot be definitely answered. I am

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under the impression that a copy of the complaint and notice of hearing, or at least the amended notice of hearing, served on the I.B.E.W. referred to information contained in Board's Exhibit No. 1 but I will reserve decision upon the motion to amend paragraphs 23 and 24, the motion relative to paragraph 22, adding "semicolon" after the word "solicitors", in the last line, bottom of page seven is granted.

Judge Ransom: No question about that matter of punctuation. I assume that was purely a typographical error because some of the copies we received had it and some did not, and I regard the matter as of no moment.

Trial Examiner Gates: Proceed.

1228 *Martin A. Wersing—For N.L.R.B.—Direct*

Mr. Moscovitz: Judge Ransom, do you want any of the witnesses that we had on the other day, or shall I proceed with the next witness?

Mr. Ransom: Not today, unless you feel it is important. I am entirely willing you should clear up the other witnesses and get rid of them.

Mr. Moscovitz: I will call Mr. Wersing.

1229 MARTIN A. WERSING, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) What is your full name please? A. Martin A. Wersing.

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Q. Where do you live? A. At present at No. 170 Hicks Street, Brooklyn.

Q. By whom are you employed at the present time?

1230 A. By the Utilities Division of the United Electrical and Radio Workers of America.

Q. Is that an organization affiliated with the C.I.O.? A. It is.

Q. That is the Committee for Industrial Organization? A. That is correct.

Q. What is your position with the organization? A. I am chairman of the field representatives.

Q. What are your duties as chairman? A. The Utilities Division—

Judge Ransom: Objected to as immaterial.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. The Utilities Division of the United Electrical and Radio Workers of America is at the present time conducting an organizational drive, in the utilities throughout the country. That is at the present time what we are doing. It is now the major part of our work. It has at the present time a large staff of organizers and representatives throughout the country. It is my job to corelate the field work of these representatives; to set up branch offices; subregional offices and so forth.

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Q. (By Mr. Moscovitz) When have you been chairman—since when have you been chairman of that divison? A. Since its formation two weeks ago today.

Q. What position did you hold immediately before becoming chairman of the divison? A. I was president of the Utility Workers Union, local 1212, of the United Electrical Radio Workers.

Q. How long were you president of that local? A. Since its formation on or about March, 1937.

Q. What position did you hold before that? A. I was president of the organization which was the present local's predecessor, local B-752 of the International 1233 Brotherhood of Electrical Workers.

Q. As president of the local of the United Electrical Radio Workers, will you tell us what your duties were? A. Well, they were many and varied. Generally, briefly, my duties in the present local were to look after the general well being, interest of the membership at large, to at the same time participate in organization work as an organizer, and to be more or less directly in charge of the Manhattan end of the organizational work; to conduct and officiate at meetings of the local union membership executive committee; and other committees.

1234 *Martin A. Wersing—For N.L.R.B.—Direct*

Q. What geographical area did the local cover? A. All of that part of the city of New York and the metro-

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politan area which is served by Consolidated Edison and its affiliated companies.

Q. Was the local one which only had within its membership employees of the Consolidated system? A. Either employees presently or formerly.

Q. And when you say "employees formerly", do you
1235 mean persons who had been formerly employed by the Consolidated System but who are now employed elsewhere? A. No, to the best of my knowledge, all of the members who are not presently employed by the Consolidated Edison are unemployed or temporary employees with the W.P.A. or something like that.

Q. You became affiliated with the United Electrical Radio Workers as I understand your testimony in March, 1937. Is that right? A. That is correct.

Q. Were you at that time affiliated with the C.I.O.? A. Prior to our affiliation with—

Q. At the time you became affiliated with the new
1236 U.E.R.W.? A. No, we were not.

Q. So that when you first became affiliated with the United Electrical Radio Workers, there was no affiliation with the C.I.O.? A. That's right, correct.

Q. When did you receive your charter from the United

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Electrical Radio Workers? A. On the night of March 19, 1937.

Q. I see. And did you operate from that time on under a constitution and by-laws? A. Yes, we operated under the constitution and by-laws of our parent organization, the United Electrical and Radio Workers.

Q. And are you still operating under that constitution and by-laws? A. We are.

Q. And when, then, did you become affiliated with the C.I.O.? A. Our affiliation with the C.I.O. was automatic. The United Electrical and Radio Workers is a part of the C.I.O. and our affiliation with it automatically affiliated us with the C.I.O.

Q. Is this a copy of the constitution and by-laws of the United Electrical and Radio Workers of America under which your organization is operating and has been since March of 1937? A. It is. 1238

Mr. Moscovitz: I offer this, Mr. Examiner.

Judge Ransom: I object to that as incompetent.

Trial Examiner Gates: It will be admitted.

(Document referred to marked Board's exhibit No. 8 for identification received in evidence, Witness Wersing.)

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Q. (By Mr. Moscovitz) You were formerly employed by the Consolidated Edison System, were you not? A. Yes, sir. 1239

Q. What company? A. By the New York and Queens Electric Light and Power Company.

Q. In what capacity? A. As a second-grade clerk.

Q. And until what date were you so employed? A. November 29, 1935.

Q. At the time you were last employed by the company were you a member of any labor organization? A. I was.

Q. What organization? A. The Brotherhood of Utility Employees of America, Queens Local No. 103.

1240 *Martin A. Wersing—For N.L.R.B.—Direct*

Q. Was that organization affiliated with any other body? A. It was not.

Q. What is it, was it known as an independent organization? A. It was.

Q. Did the organization have within it employees of companies other than companies of the Consolidated Edison System? A. It did not.

Q. Was it a local organization geographically speaking or was it national? A. The parent body, the Brotherhood of Utility Employees of America was, in effect, a

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national organization having local unions in several parts of the country as well as New York.

Q. And your local was in existence only in the Metropolitan area? A. That is correct, its jurisdiction covered merely the properties of the New York and Queens Electric Light and Power Company.

Q. No other? A. No other.

Q. And only the employees of that company, is that right? A. That is correct. However, it was permissible for us to give temporary haven to employees of other

1242 companies in Queens until such time as a local of their own was formed.

Q. What was your position with the independent organization at the time you last worked for the company? A. I was general manager of the local union and president of the New York Regional Board of the Brotherhood of Utility Employees.

Q. What was the New York Regional Board? A. That was a joint board consisting of representatives from the various locals in the Consolidated Edison System and in the metropolitan area in other Utility companies.

Q. How long were you general manager of the local and president of the Regional Board? A. I was general manager, I would say, roughly for a period of several

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months only, I was president of the regional Board from its formation which was probably for a period of about a year.

Q. When was it formed? A. Sometime in 1935.

Q. About April? A. Probably April or May.

Q. Did you continue as president of the New York Regional Board in the Brotherhood up until the time you left the employ of the company? A. I did.

Q. And were you president at any time after leaving the employ of the company? A. I was president until 1244 it went out of existence.

Q. When was that? A. That was in April, 1936.

Q. Did it go out of existence at that time or did it become part, as a result of reorganization, of another labor organization? A. Well, at that time, we went into the American Federation of Labor and reorganized the set up of it, the structure of the local unions in the Consolidated Edison System, and while we incorporated in the new structure some of the thoughts and ideas behind the joint board, the joint board itself did not continue in existence in any form.

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Q. When you say that you became affiliated with the American Federation of Labor, do you mean the International Brotherhood of Electrical Workers? A. That is correct.

Q. Do you recall the date? A. On or about April 23rd, 1936.

Q. Did you receive and accept a charter from the I.B.E.W. at that time? A. We did.

Q. And did you from that time hold any official position with the I.B.E.W.? A. Yes, I was president of the Local union.

1246 *Martin A. Wersing—For N.L.R.B.—Direct*

Q. What was the local? A. No. B-752.

Q. How long were you president of that local? A. For the period—rather, for the period in which we stayed in that local union which was from the date of its formation until about March 19th, 1937.

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Q. That, then, would be approximately for one year, is that right approximately? A. Approximately, yes.

1247 Q. As president of that local, can you tell us whether or not you had within your membership employees from companies other than Consolidated Edison Company—Consolidated Edison System companies? A. No, we did not.

Q. Was it the same geographically as you have already described it? A. Correct.

Q. The metropolitan area? A. That is right.

Q. And after March, 1937 did you continue as president of the local of the I.B.E.W.? A. No, after March, 1937, we went into the C.I.O., so I did not continue as president of that organization.

1248 Q. Now, until the time you became affiliated with the C.I.O., speaking of the period from your last day of employment with the company, until you went with the C.I.O., did you receive any salary from either the Independent Brotherhood or the I.B.E.W. in return for your official work?

Mr. Ransom: I object to this whole line as related to the period subsequent to the termination of employment of this witness by the New York, Queens Electric Light & Power Company and not within any of the issues.

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Trial Examiner Gates: You may answer.

Mr. Ransom: Exception.

The Witness: I am not on a salary basis with the Independent Union, at the time we went into the American Federation of Labor, that is, into the International Brotherhood of Electrical Workers, arrangements were made for me to go on a full-time paid position and the rate was $25 a week. That started on or about March 1, 1936.

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Q. (By Mr. Moscovitz) And did that continue throughout the time that you were affiliated with the I.B.E.W.? A. That's correct.

Q. Have you been working on a salary basis with the United Electrical Radio Workers? A. I have.

Q. And what was your salary then with the United Electrical and Radio Workers? A. Well, working on full time as president of the local union I was receiving $25. a week, since then as chairman of the field representatives, the Utility Division of that organization, I am receiving a salary of $40. a week.

Q. And that is your salary at the present time? A. That is correct.

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Q. Do you recall the date when that change in salary became effective? A. On or about May 31st, 1937.

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Q. And up until the time you began working at a salary of $25. a week, was all of your work free? A. That's correct.

Q. And all of the labor work that you have been describing so far this morning took place after you left the employ, or after the severance of your employment

1252 relationship with the Consolidated Edison System, is that right? A. I am afraid I don't get the question. My work as president, as an official of the local union, started before my connection with the company was severed.

Q. But at the time your relationship with the company was severed you were with the Independent Brotherhood? A. That's correct.

Q. And the other discussion regarding the I.B.E.W., and U.R.E.W. came afterwards, is that correct? A. Yes,

1253 sir.

Mr. Ransom: I move to strike out all the testimony relating to the period after the termination of this witness' employment on November 29, 1935.

Trial Examiner Gates: It may stand.

Mr. Ransom: Exception.

Q. (By Mr. Moscovitz) Now, at the time you were president of the local, affiliated with the International Brotherhood of Electrical Workers, which is affiliated

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1254 with the American Federation of Labor, you operated under a constitution and by-laws, did you not? A. We operated under a constitution, we never were able to get our by-laws officially okayed by the International office, so we were compelled to operate without their benefit.

Q. But the constitution under which you operated also contained certain rules for local unions under its jurisdiction, did it not? A. That is correct.

Q. And did you also work under the same constitution, while you were a member of the I.B.E.W.? A. That is correct.

1255

Q. And is this the constitution which also contains rules for local unions under its jurisdiction to which you have just referred?

(Document passed to the witness.)

A. Yes, I believe that is the last edition of the regular constitution of that organization.

Mr. Moscovitz: I offer that, Mr. Examiner.

Trial Examiner Gates: Wasn't that marked for identification?

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Mr. Moscovitz: It was withdrawn.

Mr. Ransom: What is the purpose of this offer?

Mr. Moscovitz: I offer it, Mr. Examiner, to

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show that the International Brotherhood of Electrical Workers, of which this gentleman was a member and in which he held an official position, is a labor organization within the meaning of the statute. I also offer it so that the Board may have before it a complete picture of all of the labor organizations involved in this proceeding.

1257

Mr. Ransom: I object to the offer on the grounds that it is incompetent, no proper foundation laid, not within any issues tendered by the complaint as it stands, and on the grounds that if the complaint is permitted to be amended so as to bring a Section 8 subdivision 2 cause of action within the scope of paragraphs 23 and 24 of the complaint, that there is a fatal defect of parties necessary to a valid proceeding in that the labor organization to which this proposed exhibit relates is not a party to this proceeding.

1258 *Martin A. Wersing—For N.L.R.B.—Direct*

Trial Examiner Gates: I will reserve decision on it.

Mr. Moscovitz: May I then have it marked for identification?

Trial Examiner Gates: Yes.

(Document referred to marked Board Exhibit No. 9 for identification, Witness Wersing.)

Q. (By Mr. Moscovitz) When did you first become a member of the Independent Brotherhood? A. February,
1259 1934.

Q. At the time you became a member of the Inde-

S. M. 383

pendent Brotherhood, were you a member of any other labor organization? A. I was not.

Q. Do you know whether or not there were any other labor organizations within the Consolidated Edison System at that time? A. None that I have ever heard of.

Q. Were you one of the organizers of the Brotherhood, the Independent Brotherhood? A. Not of the National, what was subsequently the National organization.

1260 Q. Were you an organizer of the local of the Independent Brotherhood? A. I was.

Q. Were there any other organizers? A. There were.

Q. Within your company? A. That's correct.

Q. Who were they? A. In the Queens Company those who worked with me organizing the local, there were Jack Schulter; J. A. Greulick; Edward Axien; Alfred Wrench.

Q. Did you become affiliated with the Independent Brotherhood after certain organizational activity? A. The local union?

Q. Yes. A. Yes.

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Q. How long prior to your affiliation with the Independent Brotherhood did you take steps to organize the local? A. I did not—I first affiliated as an individual with the National organization and while in there, met these men that I have just mentioned and we, working together, proceeded to organize this local.

Q. And were they at the time you met them, members of the Independent Brotherhood, too? A. They were.

Q. Did you have—strike that out, please. Did you have officers of the local, of the Independent Brotherhood? 1262 A. We did.

Q. Who were they at the time of your first official meeting? A. They were myself as temporary president, Edward Axien as vice-president, Jack Schulter as secretary. Then, in addition, we had something of an executive board and on that was Mr. Greulich, with possibly one or two others whose names I do not recall.

Q. Do you recall the date? A. In July, 1934, we organized this local and held the first meeting of it.

Q. Did the persons whom you have already named continue as officers of the Independent Brotherhood? A. They did. 1263

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Q. Of the local? A. That is correct.

Q. And in the same official positions which you have already named? A. Yes, up until the next election, when there was some change.

Q. When was the next election? A. In February, 1935.

Q. And what were the changes? A. Mr. Schulter and Mr. Axien were not continued in their previous official position. On or about that time Mr. Schulter became

head of the publicity department of the union and Axien relinquished his office.

Q. Who got their positions? A. William Aycock was elected vice-president, and Alfred Wrench was elected secretary.

Q. Were those the only changes? A. Well, there were additions made at that time.

Q. Do you recall the additions? A. Which consisted of William J. Kennedy, Michael A. Wagner, Henry Dunham, and I believe one or two others at that time.

1265 Q. What were the positions? A. Michael A. Wagner was elected as treasurer, and the rest of them were executive board members along with Mr. Greulich.

Q. Do you recall the date? A. Not exactly, no, Feb-

S. M. 386

ruary, 1935 is as near as I can place it.

Q. Yes, and did those gentlemen continue in those offices for any period of time? A. Yes, they did.

Q. What period of time? A. Practically all of them up until the time the local was changed.

Q. Which was— A. That was our last election. We
1266 never had another election until we came into the I.B.E.W.

Q. Which was when? A. Which was in April, 1936.

Q. Yes. And during that whole period of time until April, 1936, were you the president of the local? A. No; I changed office during that time. A convention of the National organization was held and Mr. Kennedy was elected president of the National organization.

Q. When was that? A. That was in August of 1935.

Q. Yes. A. And that made it necessary for him to relinquish his job as general manager, and I took the job over and operated it at the same time as president of the Joint Board.

Q. Then, there were no other changes in any of the

S. M. 387

official positions until the affiliation with the Independent Brotherhood of Electrical Workers. Is that right?

Mr. Ransom: You mean the "International Brotherhood?"

Mr. Moscovitz: Yes, excuse me, the International Brotherhood.

A. I have a note in my book. I wonder if I might 1268
look at it. I think I am skipping one or two individuals who were elected to office. Some time between the election in February, 1935 and the time we went out of existence as a local union in April, 1936, there were added to the executive board the following:

Alfred D. McGeehan; Melvin Sweeney; John Emler; John Young, and Harry Howard. Harry Howard took the place of Alfred Wrench, who was discharged or laid off as secretary of the union.

Q. When was that change? A. Exactly when, I don't know. Mr. Wrench was laid off in August, 1935, he went to work on some relief project in December, or something 1269
like that, of the same year, had to give us his active duties in the union.

Q. Those were the only additions or changes. Is that right? A. That is correct, to the best of my knowledge.

Q. Now, during the period of time about which you have been testifying, up until reorganization and affiliation with the I.B.E.W., can you tell us whether or not

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there were any labor organizations within the Consolidated Edison System? A. None that ever made—wait a minute. There was one other that made itself known

1270 *Martin A. Wersing—For N.L.R.B.—Direct*

after our National Independent Union got started. That was an organization of the International Brotherhood of Electrical Workers, Local Union No. 128. Not much was heard of them, and it was not in existence anywhere so far as I know, except in one or two departments in the company in Manhattan, or possibly the Bronx.

Q. What companies would that be? A. That would be at that time the New York Edison, or the United Electric.

Q. When did you first hear of the existence of that
1271 organization? A. Oh, I suppose five or six months after I joined, some time late in the year of 1934.

Q. Do you know whether or not during that period of time there was also in existence within the system, an employee representation association? A. Yes, I heard of the first one of its kind which came into existence in the New York Edison Company, I think, late in 1933, and we in the Queens Company, had a similar organization come about in March or April of 1934.

Q. And do you know whether or not that employee representation association continued all during the period

S. M. 389

1272 of time that you were employed by the company? A. It did.

Q. Were you a member of it? A. I was, for a short period, yes.

Q. When did you become a member of it? A. Approximately at the time of its formation, possibly in April of 1934.

Q. And how long did you continue in membership? A. I resigned as of January 1, 1935.

Q. Did you, during the period of time during which you were a member, hold any official position with the employee representation association? A. No, I did not.

Q. Just a minute. Were you just a plain member? A. That is correct.

Q. Did you engage in any of its activities? A. I did.

Q. Were you a member of any committees? A. No. I was candidate for an office in it, that's all.

Q. When you say that you were engaged in some of its activities, what do you mean? A. Well, after the election was held, we, I was off with a group of people working at night. We were out of contact with most people. We had many grievances, so I was more or less in charge of bringing our grievances to the attention of the company 1274

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union representatives to see whether or not we could get any action. I also prepared a petition to be presented through the company union to our chief, describing some of these grievances and our proposal to have them rectified.

Q. When you make reference to the company union, do you mean the employee representation plan association? A. I do.

Q. Do you use those terms interchangeably? A. I do.

Q. What time was it, if you recall, or when was the 1275
date that you took these matters up, took steps to have these matters brought up? A. At various times between the time I joined it and left. I don't know exactly. I don't remember whether this petition was prepared and signed, and then was shunted back and forth for a good many weeks without any real action being taken, and the wind-up was that the council men were afraid to take it to the chief, so it sort of died its death right there.

Q. Who was the chief? A. J. J. Smith. I believe his title at that time was accountant.

Q. Accountant? A. He was the head of the Consumers Accounting Department.

1276 Q. Was that in your company? A. Yes.

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Q. Who was the committee? A. Pat Carey was the chairman of the committee and Ralph Pedersen, I believe, was a member; Joseph Nieman; Charles Mahoney, and Victor R. Moore.

Q. What part did you have to play on that committee, any? A. None whatever. That was the regularly elected company union committee and all I did was to take mat-
1277 ters up with them.

Q. Did you take matters up with them as an ordinary member? A. Yes.

Q. Were there other men who were ordinary members who did the same thing from time to time? A. I would judge that there were. It was quite the usual thing to get hold of one of the committeemen and insist that such and such a thing be done.

Q. Did you follow through your grievance to its conclusion? A. Yes.

Q. And can you give us the period of time, approximately, and the dates when you were engaged in follow-
1278 ing through this grievance? A. No—I—

Judge Ransom: I shall object to this question and this whole line of testimony. It does not seem to me that it is within any issue tendered by the complaint. There is no allegation here with respect to this system of electing representatives, in

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which members of all labor organizations or no labor organizations participated freely. There is no charge in the complaint that this electoral system was a company union; no charge in the complaint that it is still in existence; no claim that this

man was discharged because he belonged to it; wholly outside any issues tendered by this complaint.

Trial Examiner Gates: The line so far seems admissible. Objection overruled.

Judge Ransom: Exception.

A. I don't recall the exact period when this matter of drawing up a petition asking for increased wages and let down in the amount of work that was given us, was started. It did, as I recall, cover a period, however, of a good many weeks. It was necessary to draw it up and 1280
take it around and have it signed, then get one of the committee members to bring it up before the council, and we did not hear anything on it for a week or more, and we discovered that the man who had it was afraid to bring it up before the council.

Q. (By Mr. Moscovitz) Who was the man who had it?

Judge Ransom: I move to strike this out as wholly incompetent and in no way binding upon the respondents, indefinite, dates aren't fixed. Such matters merely occupy time and could be of no probative force.

Trial Examiner Gates: The points raised, Mr. 1281

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Ransom, seem to be pretty well taken. He may continue.

Judge Ransom: Exception.

A. I don't know who the name of the secretary was at that time. He is the man who had it and he finally did bring this up after repeated urging and the expected thing was that the committee would be selected from the council and taken before J. J. Smith, the head of the department. To the best of my knowledge, that was never

done. They never gave us any written acknowledgment as to why their actions were what they were. They merely said, by word of mouth to me and others, that they thought we were asking for too much money, to which we pointed out that it wasn't their job to tell us how much money we were worth. It was their job to go and see what the company could do about it.

1283 Judge Ransom: I move to strike out the answer as wholly incompetent, not within any possible issue in this proceeding. It is vague and indefinite, and of no probative force, in no way binding upon the respondents.

Trial Examiner Gates: It may stand, but I suggest that the point in connection with the dates named be cleared up.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Can you give us the year when this petition was being presented? A. Yes, 1935.

Q. You say 1935? A. That is correct.

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1284 Q. And do you recall what months? Can you tell us whether or not the petition was submitted in the early months of 1935 or the later months of 1935? A. No, I would fix it approximately in the month of August or September.

Q. And would you fix, then, the period during which this petition was being submitted and discussed as a period following or September, 1935? A. Well, if it was first introduced in August it hung around until it came back to me for a period of two months, making it running into September, it was introduced in September, it continued until November.

Q. And the only point in the petition was wage increase, is that right? A. And adjustment of other, wage

increases, and the lessening of work, I believe was the two points covered.

Q. And none of these points raised in the petition were adjusted, is that right? A. That is correct.

Q. Now, when you testified before that you ran for office in the employee representation association, can you tell us whether or not at the same time you were an officer of the Independent Brotherhood? A. No, I was not.

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Q. Were you a member of the Independent Brotherhood? A. I was.

Q. When was it that you ran for office of the employee representation association? A. In April, I believe, either in April or May of 1935.

Q. What office was it that you ran for? A. Just a bureau representative.

Q. Did you run for it by the filing of application, or were you nominated by some one from the floor? A. The manner in which these nominations were held was through letters, as I have forgotten just exactly how it was, however, you were not nominated at a membership 1287
meeting, the men in my division nominated me on a blank ballot which was provided for that purpose.

Judge Ransom: A nomination by petition, wasn't this, signed by employees, they signed up a petition to nominate you?

The Witness: I am a little hazy on just how that was done in the first election, whether it was by petition or by ballot.

Q. (By Mr. Moscovitz) And do you recall when that was? A. That was at the time of the formation of the plan in April or May of 1935.

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Q. Were you defeated for that office? A. In '34, rather.

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Q. '34? A. Yes.

Q. Were you defeated for that office? A. I was.

Q. That was in 1934, is that right? A. That is right.

Q. Did you ever hold any office with the plan? A. I did not.

Q. Did you take any other active part in the plan out-
1289 side of following the petition through and running for that particular office? A. I did not.

Q. Did you at any time, before your relationship with the company was severed in November, 1935, bring to the attention of the company yourself the fact that you were a member and officer of the Independent Brotherhood? A. I did, I wrote a letter in resigning from the company union, I wrote a letter to the chairman of my council, informing him that I was resigning and why.

I also wrote a letter to Mr. J. J. Smith, the chief of my department, informing him that I did not see any tangible benefits to the employees from the company
1290 union, that I intended to resign from it and to devote all my energies towards building an independent union and showing him that I would in no way allow my activities on behalf of the Independent Union to interfere with my

S. M. 397

work as an employee in his department.

Judge Ransom: I move to strike out the answer as incompetent, self-serving, in no way within any issue here, no charges made here or complaint against this employees representation, against the electrical system representation—

Trial Examiner Gates: Who is Mr. Smith?

The Witness: Mr. Smith was the chief, the head of the department in which I worked, Consumers Accounting.

Trial Examiner Gates: Will you state his initials, please?

The Witness: Pardon me?

Trial Examiner Gates: State the initials or the name.

The Witness: J. J. Smith.

Trial Examiner Gates: The motion to strike is 1292
denied.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) When was it that you brought this fact to his attention? A. In December of 1934, I believe it was, I sent him a registered letter informing

Judge Ransom: Exception.

him of my intentions to which I received a receipted return.

Q. Did he communicate with you at any time after that regarding your statement to him? A. Nothing other than his letter of acknowledgment. 1293

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Q. How soon after you sent the letter did you receive a letter of acknowledgment?

Judge Ransom: I object to this, it is obviously remote, it is to the year before the discharge and there is no claim that the termination of employment in any way related to what the witness did or did not do or the question of employees election of their representatives for collective bargaining, wholly too remote.

Trial Examiner Gates: Objection overruled.

1294 The Witness: I believe it was within a week or ten days after I sent my letter that I received the reply.

Q. (By Mr. Moscovitz) Yes, and what was that, did the sending of your letter to Mr. Smith fix the time when you last were associated in any way with the employee representation association? A. No, my letter of resignation followed my letter to Mr. Smith and just exactly how closely I don't know, but it was dated January 1, 1936, the letter of resignation.

1295 Q. To the employees representation association? A. Yes.

Q. And after January, then, of 1936, you had no other connection with it, is that right? A. That is right.

Q. You attended no meetings or engaged in no activities, is that right? A. That is right.

S. M. 399

Q. Did you, then, until November, 1935, when you were last employed by the company, spend your time exclusively outside of your regular employment? A. That is right.

1296 Q. In the Independent Brotherhood of Utility Employees? A. That is right.

Q. Now, during that time, can you tell us whether or not you at any time took any questions up with management? A. Yes, the first question I believe that was taken up with the management was the one involving myself, in what our local union thought to be undue discrimination.

Q. When was that? A. That was in, I believe, March or April of 1935. At that time I was working on the night division and had tried several times to get a transfer to regular day job unsuccessfully. I made application for a particular job which I thought I had the quali-

fications for, and while I received, I believe, a letter acknowledging receipt, no—no, I did not receive anything on that—however, a man who worked with me who had three or four years less seniority than I—

Q. What was his name? A. James Gorman, he received the job and I could find out or I could think of no reason why he should receive it.

S. M. 400

Judge Ransom: Just a moment, I object to this line of inquiry, not within any issues tendered by 1298
the complaint and charge, there is no issue here of discrimination and treatment of employees.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

The Witness: So I brought the matter before the executive board of the local, with the result that they appointed a committee consisting of Mr. Grulich and myself to seek an appointment with Henry L. Snyder, president of the New York & Queens Electric Light & Power Company.

Q. When was that? A. I believe that was in March, the early part of March, 1935, we sought this appoint- 1299
ment and it was granted.

Q. You sought what? A. I mean this conference.

Q. Yes. A. And it was granted. Mr. Snyder listened to what we had to say concerning the case and informed us that he did not believe that any discrimination was involved, that there must have been some other explanation for it. I left him a copy of my service record and qualifications and so forth, and my reasons for believing I should have gotten this job, and that I had been discriminated against because I did not get it. He prom-

1300

S. M. 401

ised that he would write me and let me know just why I had not received consideration for the job. I received a letter from him two or three days later, in which he stated that owing to the fact that I had submitted my application for this job on the sixth day, it had not been considered, that as far as any one I have ever spoken to about it is concerned, that is the first time they have ever, the personnel department, ever held it down to where it was an exact five days. I had submitted my

1301 application—

Judge Ransom: I object to this, wholly aside from any issue here, there is no claim against any of the respondents of discriminatory treatment of employees, the issue here is discharge of six employees, of whom this witness is one.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

The Witness: I submitted my application on the fifth night, I believe, and it probably got into the hands of the personnel on the sixth day. However, it was properly dated, and so forth.

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Q. (By Mr. Moscovitz) You handed it in, then, on the fifth night of the five-day period? A. That is right, yes.

Q. Did you take this matter up with the management in the name of your labor organization? A. I did.

S. M. 402

Q. And did you make it known to the representative of management with whom you spoke that you were a committee of the labor organization? A. We did.

Q. Were any persons outside of yourself and Mr. Grulich in attendance at that meeting? A. Mr. Porter, whose title I don't exactly know, I believe he is assistant

to the president, was one at that time who was in attendance.

Q. In addition to whom? A. In addition to Mr. Schneider and Mr. Grulich and myself.

Q. All right, do you recall Mr. Porter's first name? A. No, I don't, Russell, I believe.

Q. Have you fixed the time when this took place? A. Exactly, no, as I recall it, however, it was in the early part of March, 1937 or, rather, 1935.

Q. Was that the last time you spoke with those gentlemen on that question? A. That was the last time I 1304
had any occasion to see Mr. Schneider.

Q. Did you at any time after that meeting and before November, 1935, have occasion to take any other question or questions up with the management? A. I believe in May, 1935, it was I directed a letter to Mr. Schneider pointing out what had been reported to the

local union as discrimination on the part of other branches of the management, particularly in connection with a company union plebescite, and whether or not the plan was to be continued or it was to be dropped by the 1305
employees. This took place in May of 1935, I believe.

Judge Ransom: I move to strike it out, strike out the answer as wholly outside of the issues tendered by the complaint.

Trial Examiner Gates: The motion is overruled.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Who signed the letter? A. I did.

Q. Any one else? A. That is all.

1306

Q. And was it signed as president of the Utility employees? A. That's right, the local union.

Q. What local union was that? A. Queens Local 103.

Q. What was the plebiscite to which you referred? A. At a general meeting of the representatives of the plan, on the properties of the company, a motion was introduced.

Q. Where was this? A. In the Central Service Station in Flushing, Long Island.

Q. Yes, go ahead. A. The motion was introduced,

1307

S. M. 404

I believe, in which a considerable number of employees expressed doubts as to whether or not the plan was worth continuing and worth supporting. They decided to put it on the ballot to see whether or not the employees wished to continue. This was done. It was a result of a number of incidents that occurred during the campaign preceding the actual vote that my letter was concerned.

Q. And did you refer to any other problems in your letter to management of May, 1935? A. I think not.

Q. Did you request an audience so that you might

1308

discuss the question? A. No, not that I recall. We merely referred Mr. Schneider to a letter that he himself had written and posted on the bulletin board in which he said that the management's policy was one that would keep it from interfering in any way with the employees' choice or non-choice of a union. This we believe to have been violated by the actions of different branches of the management and so directed our letter. We did not ask for a conference, however, any further, we requested that he make himself familiar with them and rectify them.

Judge Ransom: I move to strike out the answer as hearsay and incompetent and wholly outside any issue tendered in the complaint.

S. M. 405

Trial Examiner Gates: The motion to strike is denied.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Did you receive an answer to that letter? A. We did not.

Q. Did you take the question up with him again? A. We did not.

Q. At the time you sent that letter of May, 1935, had your organization discussed with management the question of whether or not a contract to your employees should be negotiated? 1310 A. We had not.

Q. Was your organizational work still continuing at that time? A. It was.

Q. Was it only within your own company, or was it extending to other companies? A. No, our organizational work was confined to the New York and Queens.

Q. No steps were being taken at that time in any of the other companies, is that right? A. Other locals of the Brotherhood of Utility Employees were similarly active in their particular companies.

Q. All affiliated with the same Independent International, is that right? 1311 A. Yes.

S. M. 406

Q. Or National, rather? A. Yes, National.

Trial Examiner Gates: We will take a short recess.

(Whereupon, a short recess was taken.)

After Recess.

Q. (By Mr. Moscovitz) You made some reference before in your testimony, Mr. Wersing, to a petition which you followed through while you were a member of the

employee representation association, and you gave the date as 1935. Is that the correct date? A. No, as I recall it now, it should be 1934.

Q. 1934? A. Yes. I was not a member of the plan in 1935.

Q. Yes. The same months, though? A. The same months, yes.

Q. All right. The time you last testified about, when you were in contact with management, you were also actively engaged in your organizational activities. Is
1313 that right? A. That is correct.

Q. Were other members actively engaged with you in the same kind of activity at that time? A. That is correct.

Q Do you recall who they were? A. Yes, all of those I previously listed as having been elected to some office

or to the executive board, at one time or another, were very active, in addition to a number of other men.

Q. And did that activity, by those men and yourself, continue until your new affiliation with the I.B.E.W.? A.
1314 That is correct.

Q. Did you, after May, 1935, take any other question up with the management, as a representative of the Independent Brotherhood of Utility Employees? A. Yes, we took, we had another occasion to go to the management in reference to the discharge of one of our members, a James Mannix.

Q. When was that? A. That was on or about November 15, 1935.

Q. Was that before or after you severed your relationship with the company, or your relationship with the company was severed? A. That was just prior to the severance.

Q. Do you recall the exact date? A. Approximately November 15th. As I recall it, we submitted a report to the Local on the matter dated November 20th or 21st.

Q. What was the exact date of the severance of your employment? A. November 29, 1935.

S. M. 408

Q. Yes. Who, in addition to yourself, presented this question to management? A. Mr. Grulich.

Q. No one else? A. No one else.

Q. And to whom in management did you present this 1316
question? A. Mr. Dean, Harold C. Dean, I believe is the full name, who was at that time vice-president of New York & Queens Electric Light & Power Company.

Q. Did you or Mr. Grulich make the appointment? A. I believe Mr. Grulich made the appointment.

Q. Yes. Did you see him once or more than once? A. Just once.

Q. In his office? A. In his office, yes.

Q. Did you take the matter up, with him in the name of your organization? A. We did.

Q. Was it in writing at all before you went to see him, or verbal? A. I believe the appointment with him was 1317
made through his secretary over the telephone.

Q. And then you went to see him, didn't you, is that right? A. Yes.

Q. And did both you and Mr. Grulich discuss this

S. M. 409

question with him? A. We did.

Q. What was the question you discussed with him?

Judge Ransom: I object to this as wholly outside of any issue tendered by the complaint. There is no charge or no complaint here involving one Mannix.

1318 Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. Mr. Mannix reported to us that he had been discharged from his job in the company and said that he had been framed. His story or, rather, we had made an appointment with him, to speak more at length on the matter, we thought more fully the circumstances surrounding his discharge, but he didn't show up to keep the appointment. That made us somewhat wary of just how accurately he might have described the circumstances surrounding his discharge, and we felt it would be best for the local if we interviewed management and ascer-
1319 tained for ourselves just what their side of the story was.

Judge Ransom: I move to strike out the entire answer as in no way binding upon the respondents or within any issues here, wholly hearsay, expression of opinion, mingled with a lot of hearsay.

Trial Examiner Gates: Motion to strike is denied.

Judge Ransom: Exception.

S. M. 410

A. So we made the appointment or, rather, we kept the appointment, and we told Mr. Dean the reason for our
1320 presence. Mr. Dean was something less than friendly and cooperative, despite the fact that we—

Judge Ransom: I move to strike out the characterization. The witness is not an expert on human temperament, and is not offered as such.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. We explained, as I said, our reason for being there, and after some conversation, which did not seem to be getting us anywhere, Mr. Dean finally did say that the management let Mr. Mannix go for the good of the service, and further than that he would not discuss the

situation, but one other thing, concrete statement was made, as I recall it, by Mr. Dean, and that was that Mr. Mannix's supervisors were also either dismissed or demoted as a result of the circumstances surrounding Mr. Mannix's discharge.

Q. Did he make any reference as to what those circumstances were? A. He did not.

Q. Did you have anything to say to Mr. Dean? A. In reply to Mr. Dean's question as to what right we had to be up there representing Mr. Mannix, I informed him that I was an official of the union, president, at that time. 1322

S. M. 411

But Mr. Grulich was an executive board member, and we had the duty, not only the right, but the duty, to do whatever we could in the interests of our membership. For that reason we were there.

Q. What was his statement regarding that? A. I don't believe there was any further statement by Mr. Dean on the point then.

Q. Did you have anything further to say? A. Not particularly, no.

Q. And did you have anything—did you have any further conference with him about Mr. Mannix? A. We did not. 1323

Q. Was that the last conference you had with Mr. Dean? A. That's right.

Q. Did you, between that date and the day in November, when your relation with the company was severed, have conferences with any other representatives of management? A. Yes, I eventually received a transfer to day work.

Q. When was that? A. That was in May, 1935.

Q. Now, this conference that you had with Mr. Dean, as I understand it, was in November, 1935. Now, was this conference or discussion that you are going to tell

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us about now, one which took place between your conference with Mr. Dean in November, 1935 and the last day you worked for the company in November, 1935? A. I

S. M. 412

believe the conference and the letters which I am desirous of describing now commenced before the appointment with Mr. Dean and continued shortly thereafter.

Q. Shortly after the November conference with Mr. Dean about which you have already testified? A. That's

1325 right.

Q. Will you tell us about that? A. As I say, I did receive a transfer to day work. I discovered after I got the job—

Q. Was this transfer to day work a transfer made at your request? A. The usual notice of vacancy had been posted on the board.

Q. When was this? A. Probably in April, shortly after our conference with Mr. Sneider on my failure to get this other job which I tried for.

Q. Was this in April, 1935? A. Correct.

Q. Yes. A. The job that I took, and I discovered after

1326 I got it, was one that had been held for a first grade clerk, and I was given the second grade rating on it. Rather, my second grade rating was continued in this, what had formerly been a first grade job. I spoke with my immediate supervisor—

S. M. 413

Q. Who was that? A. Harold Locke, who was head of the stores accounting, stores accounts division, into which I had been transferred, about this, and he took the matter up with various higher officials in the auditing department, of which the stores accounts division was a part.

However, nothing came of it, and I started correspondence and discussion with the personnel bureau.

Q. Who were the personnel bureau? A. Mr. M. D. Smith.

Q. Do you recall when it was that you started this correspondence with him? A. August, I believe, 1935.

Q. Yes. A. In the course of the negotiations with Mr. Smith to have my rating changed, I sent him a number of letters, certain petitions, on the work I performed, how much time I spent on various phases of it, and had, I believe, two different conferences with him. The result 1328
was that he repeated in writing what he had previously said, that my rating would not be changed, would be continued.

Q. What was his job with the company, you say that he was in the personnel? A. In the personnel bureau, and I don't believe he was head of the personnel, but he

S. M. 414

was one of the higher officials in the personnel and he was also chairman, I believe, of the reclassification committee for the management.

Q. Now, did you do anything further about it? A. 1329
No, they got rid of me too quick to do anything further about it. I had received my last letter from Mr. Smith on this matter some time about the middle of November.

Q. 1935? A. That's right.

Q. Well, did you get the transfer from night work to day work? A. I had gotten that, yes, sir.

Q. And when was it that you got that? A. That was in May, 1935.

Q. And did you want to be transferred back to night work? A. No, I wanted my new job on the day work to be reclassified, or, rather, that I be paid what the job has been classified at before.

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Q. Yes, and did you succeed at all in getting a rating? A. No, I did not.

Q. And when did you finally learn that your application for reclassification was denied? A. About the middle of November, 1935.

Q. Was it after the conference with Mr. Dean that you have already testified about 1935? A. Either several days before or several days after this conference I

S. M. 415

1331 received the final, the last letter which I did on the subject.

Q. I show you a letter signed by the assistant to the employment manager dated November 13, 1935, and ask you if this letter refers to the application about which you have just been testifying?

(Document passed to the witness.)

A. No, this was concerned with another vacancy, notice of which appeared on the bulletin board, for which I made application, nothing was ever done on this.

Q. Well, then, if you will return that to me I will

1332 show you a letter dated November 4th, dated and signed by Mr. Smith, secretary, Salary and Job Classification Committee, and ask you if that is the letter concerning the rating request that you have been testifying about?

(Document passed to the witness.)

A. That is correct.

Q. And is that date, is that last letter that you received regarding the request for a reclassification, is that the last letter you received? A. I believe it must be. I had believed that the date was later in the month, but that seems to be the last one which I received.

Q. The date, then, would be November 4, 1935, is that right? A. That is right.

S. M. 416

Q. Now, the letter which I showed you immediately before, dated November 13th and signed by the assistant to the employment manager, refers to what situation? A. To another job which the notice for the vacancy of which was posted on the bulletin board and for which I applied.

Q. What job was that? A. Oh, I forget the classification of it, it was the job which carried a larger wage than the one I was receiving at that time, for that reason I applied for it. 1334

Q. And is this the only letter that you received in response to your application for that position, the one dated November 13, 1935? A. Yes, I believe it is.

Mr. Moscovitz: May I have that marked for identification?

(Document referred to was marked Board's Exhibit No. 9* for identification.)

Mr. Moscovitz: You will notice the last paragraph of this letter, which is Board Exhibit 9 for identification, states that it seems probable that you will qualify for the position, that you will be notified to appear for an interview on or before November 15, 1935; was your appearance requested? 1335

A. No, it was not, I don't recall receiving any further word whatsoever in reference to that particular job.

Q. Did you receive any communication after that at

S. M. 417

all about any question from management? A. No, I don't recall any communication or word of any sort.

* Letter was identified as Exhibit No. 9, although another document had been marked as Exhibit No. 9. This letter was not included in the Transcript of Record filed.

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Q. You took no further questions up with them? A. I did not.

Q. By whom were you discharged in November, 1935? A. Mr. Paine, who was the assistant to the personnel director.

Q. Well, after your relationship with the company was severed on that date, did you continue your activity in the Independent Brotherhood of Utility Employees? A. I did.

Q. And did you continue your activities until such
1337 time that you reorganized and became a member of the I.B.E.W.? A. I did.

Q. Did you after becoming a member of the I.B.E.W. and an officer of the local, take any steps to change to another labor organization? A. Let me get this straight, did I after becoming a member of the I.B.E.W., take any steps to change?

Q. Yes. A. At the time, well, that is rather a difficult question to answer in a few words, so I will have to explain some of the background to the situation which caused the change into the C.I.O.

Judge Ransom: I object to this as wholly in-
1338

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competent and not in any way binding on the respondents or within any issue here. At the time, it was all subsequent to his discharge, long after.

Trial Examiner Gates: What do you say to that, Mr. Moscovitz?

Mr. Moscovitz: Well, the activity about which this gentleman is now testifying, or about to testify, does take place after his discharge from the company, it is true, but it relates to another allegation in the complaint which is important and I think, too, that it is necessary that the Board have

before it a complete picture of the labor situation as it existed in this system after this gentleman's discharge.

Judge Ransom: But it is not claimed here and could not be that he was discharged because he was a member of the C.I.O., he wasn't a member, it could not be claimed that he was discharged because he belonged to the I.B.E.W., he wasn't a member. There is no complaint here involving the Independent Brotherhood to which he at one time belonged, there is no complaint here as to the em- 1340
ployees representation system or the choice of representatives, in which he for a period participated.

Now, this is wholly subsequent to his discharge and I submit that under no phase of this complaint, even the Section 8-2 allegation, can it be supported

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by any explanation of his reasons, or the reasons of others, for changing from the organization, the I.B.E.W., which this complaint would attack, if your Honor allows the amendment asked for this 1341
morning, into the C.I.O., to which this man never belonged during the period of his employment.

Mr. Moscovitz: But there is an allegation in this complaint, Mr. Examiner, concerning 8-1, and there is a question before you concerning 8-2, and this witness is qualified to testify or to give testimony on those points.

It is that testimony which I am about to elicit from him.

Trial Examiner Gates: You may proceed.

Judge Ransom: Exception.

1342

Q. (By Mr. Moscovitz) Let me put the question to you this way, Mr. Wersing. A. All right.

Q. After you were discharged in November, 1935, did you continue being active in the utility employees organization until an affiliation with the I.B.E.W., is that not right? A. That is correct.

Q. After you became affiliated with the I.B.E.W., were you continued in that organization for one year in an official capacity, is that right? A. Approximately one year, yes, sir.

1343

Q. Now, during the period of time that you were

S. M. 420

active in an official capacity for the I.B.E.W., you were representing individuals who were employees of the Consolidated Edison System, is that right? A. That's correct.

Q. And they were employees working in the company in which you had previously been employed, is that right? A. In part, yes.

Q. As well as other companies, in the system? A. Correct.

1344

Q. During that period of time, were you engaged in an organizational campaign for the I.B.E.W.? A. We were.

Q. And had you taken questions up with your International representatives regarding this campaign? A. We had.

Q. Can you tell me whether or not during that period of time any question was raised by your membership regarding a change to a different labor organization?

Judge Ransom: I object to that as wholly immaterial and not within any issue here, the question of what was thought about or discussed or

decided by the members of any particular local of the I.B.E.W. is not within any issue here.

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.

S. M. 421

The Witness: The C.I.O. progress in other industries was well known to our own membership and the matter was discussed with me by a number of our members, and while it was never brought up on the floor at the regular membership meeting, it was brought up before various committees such as the executive committee, the organizational committee, and there was a movement on in the Edison Company, itself, amongst men who were not members of our organization, to get a charter from the C.I.O. for the Edison Company. 1346

It was these things, among others, that forced us to recognize that there was considerable C.I.O. sentiment in the utility company and the Edison System.

Q. Well, during the period of time that this question of your recognizing the existence of the C.I.O. came into existence, were you engaged in any negotiations with any of the plants of the system for recognition? A. We were, our organizational plan at that time, where we had a majority of men organized in a particular plant, or division, or department, to make a request of the management that a union grievance committee be recognized, by it, to speak on behalf of the employees in each particular department. Such recognition had been accorded to our grievance committee from the Hudson Avenue generating station. Some results had come from this recognition, but there was many of the demands which 1347

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had been presented which had not received favorable consideration. In other words, that the men would have confidence in their organization and in order that the other departments could promptly continue their organizational efforts and strengthen them themselves to the point where they would have sufficient confidence to go before the management with their requests for union recognition, or grievance committee recognition, it was felt that we had to have some indication of the backing
1349 of the C.I.O., which was the only force at that time in the labor movement that was regarded by the Edison employees as being the one capable of putting up a sufficiently large and powerful fight that even the Consolidated Company would have to respect it.

Judge Ransom: I move to strike out the entire argument of the witness in behalf of the employees as not within any issue here, highly incompetent, highly self-serving and hardly warranted by his salary.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

1350

Q. (By Mr. Moscovitz) Were you then attempting to secure similar organization for other organized groups throughout the rest of the system? A. We were.

Q. Do you recall what other groups? A. Meter readers in the Brooklyn Edison Company, the inspectors

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of the Brooklyn Edison Company, the overhead bureau in Queens, which was about ready to go up and speak to the management, the sub-stations department in Manhattan, that is the D.C. sub-stations, were approaching the point where they, too, would seek this recognition.

The stage of organization was, of course, different in different departments.

They were all heading towards that objective, some were closer to it than others.

Q. Did you call the C.I.O. in to give you aid in this matter, or did the C.I.O. come in of its own accord?

Judge Ransom: I object to that as wholly immaterial, it is long after the witness's termination of employment, and not within any issue here, not binding on the respondents.

Trial Examiner Gates: Overruled. 1352

Judge Ransom: Exception.

The Witness: We called the C.I.O. in, we were acquainted with various officials of the United Electrical & Radio Workers, a C.I.O. affiliate at that time, and when we needed an expression from them as to how they felt about the utility workers and their willingness to cooperate and so on, we felt free to call upon them and they responded.

Q. I see, when was that, do you recall? A. That was March 11, 1937, at which time they sent one of their rep-

S. M. 424 1353

resentatives to appear before a Hudson Ayenue meeting we had called.

Q. Yes, and who was the representative that appeared? A. Julius Emspack.

Q. Who is he? A. He is the secretary-treasurer of the United Electrical & Radio Workers of America.

Q. And was the meeting that Mr. Emspack attended a meeting only of members of the I.E.B.W.? A. That's correct.

Q. And what was the purpose of his coming to that meeting at that time? A. To express to the membership

there assembled the same opinions, thoughts, rather, that he had expressed to myself and other officials of the union to the effect that the C.I.O. was quite willing to cooperate with us; further, that they had no intention of seeking to dis-affiliate us from the American Federation of Labor, what they were interested in was organization in the larger industries, and if it were being done in the American Federation of Labor satisfactorily they had no wish other than to help that organization.

1355 S. M. 425

Q. (By Mr. Moscovitz) And was that the topic on which he spoke at that meeting? A. Yes.

Q. When was the date of the meeting? A. That was March 11 of 1937.

Q. Yes.

Q. Was that the first meeting at which a representative of the U.E.R.W. appeared? A. Yes.

Q. Was there any further, were there any further speeches at that meeting by other individuals? A. Yes, Mr. Stonkus officiated at the meeting and spoke.

Q. But there were no other C.I.O. representatives? A.

1356 No.

Q. Were there any representatives at that meeting from the I.B.E.W. outside of your own membership? A. No one other than our membership.

Q. Did you have another meeting after that where C.I.O. representatives spoke again?

Judge Ransom: Objected to as wholly immaterial, too remote from any issue in the complaint, not within any issues here of March, 1937 and afterwards. This witness ceased to be an employee of the company in November of 1935.

Mr. Moscovitz: I withdraw that question.

Q. (By Mr. Moscovitz) Was there any change in the

S. M. 426

status of your organization after that meeting?

Mr. Ransom: Objected to as immaterial.

A. Yes, there was.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. Yes, there was on March 19 of that year, another meeting was called at which the question of just what our attitude on the C.I.O. was to be in the future. This was called as a general membership meeting, whereas the previous meeting on March 11 was a meeting particularly of our men in Hudson Avenue station. 1358

Q. Were C.I.O. representatives in attendance at that meeting? A. They were.

Q. Who was there? A. Both Mr. Emsbach and James P. Carry, general president of the U.E.R.D.

Q. Did they speak? A. They did.

Q. Was there a change after that meeting in the status of your labor organization? A. There was. Owing to circumstances which developed the day of the meeting which were that our charter was listed by the I.B.E.W., our seal, books, certain records were taken away by representatives from the International office of the I.B.E.W. 1359

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it was necessary that we have both Mr. Emsbach and Mr. Carry there and prepare to give us a charter if our membership so voted. They so voted and the charter was installed that evening.

Judge Ransom: Move to strike out the answer as not within any issue under the complaint as it

1360 *Martin A. Wersing—For N.L.R.B.—Direct*

status; that if the testimony is related to the amendment asked for this morning, that the I.B.E.W. is a necessary and indispensable party to the proceeding.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) These circumstances, to which you refer, did they all take place on the same day of this meeting? A. Yes. International office representatives called upon us at ten or eleven o'clock in the morning and
1361 proceeded with its business of listing our charter and books and so forth and at the same time serve notice upon the business manager and myself that we were suspended for speaking and considering C.I.O., having any relationship with them.

Q. Who were these representatives? A. Assistant to the president, Bieretz, and International vice-president Kloter. And further than that the man whom International president Tracy had appointed to act as temporary successor of our business manager, Mr. Marcianti, I think.

S. M. 428

1362 Q. Where did they call on you? A. At our headquarters, 3 Albee Square, Brooklyn.

Q. Was it then that they took your charter, books, seal, and other records? A. Yes.

Q. Did you receive any communication or communications that day from the headquarters of the I.B.E.W., aside from the visit from this committee? A. Yes, assistant to the president, Bieretz, presented me with a document, called set of charges, in which I was accused of plotting of the well-being of the International Brotherhood of Electrical Workers and so forth, by reason of having had relations or connections with the C.I.O. A similar—a letter embodying something of the same thing

had been sent to the entire membership and in addition to what I have already stated, was contained in the letter to me, the membership were acquainted with the fact that the meeting that night was an illegal meeting and they were not to participate in it.

Q. Was the meeting called off? A. No, went through as scheduled.

Q. And was there a vote taken on the question of whether or not there would be a change in affiliations? A. There was.

Q. Was the vote for a change in affiliations? 1364

Judge Ransom: Objected to as immaterial and

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incompetent and not within any issue here. It simply emphasizes what I tried to point out this morning, that this case is an issue against the International Brotherhood, which is not a party to these proceedings.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. A vote was taken on whether or not we should affiliate with the C.I.O. and with the exception of two votes, everybody else in the hall voted in favor of the motion. 1365

Q. (By Mr. Moscovitz) Was the charter then presented? A. The charter was then presented.

Q. By whom? A. Mr. Carry.

Q. And was it at that point then that the new local of the C.I.O. came into existence? A. That's right.

Q. What was the local number? A. Its affiliation's name was Utility Workers Union Local 1212.

Q. And has the same local continued since that date? A. It has.

1366 *Martin A. Wersing—For N.L.R.B.—Direct*

Q. While you were a member of the I.B.E.W. and before becoming affiliated with the C.I.O. did you take any questions up in your official capacity with the company? A. Yes, during the course of our connection with the I.B.E.W. there were on several occasions men discharged or laid off.

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Q. Now will you give us dates? A. In June, 1936, William J. Kennedy; John Emler; William Bakke, were
1367 laid off by the New York and Queens Electric Light & Power Company. This matter was taken up through our International office with the President of the Consolidated Edison Company, Frank Smith. The men are still ununemployed. Nothing resulted from that.

Then our next contact with the management officially was in November, 1936, when John J. White was discharged by the Brooklyn Edison Company. This man was discharged, not laid off. I think I was the only one who signed it, we addressed a letter to Mr. Floyd L. Carlisle, acquainting him with the facts of the situation and calling upon him to immediately order the reinstatement
1368 of this discharged employee. That did not happen for a period of ten days. We carried on one activity after another until the reinstatement was secured through Mr. Low, the Vice President of the Brooklyn Edison Company.

Q. And who handled those negotiations on behalf of the discharged employees? A. A committee from Hudson Avenue consisting of fellow employees of this Mr. White, called upon the management on several occasions and took up the matter. It was at that time that Brooklyn Edison Company first recognized as a union committee one of our committees.

Judge Ransom: I move to strike out the witness' statement as volunteered and calling for a conclusion, not evidence of recognition or non-recognition.

Trial Examiner Gates: It may stand. I will ask that the witness explain the facts as to that recognition.

The Witness: Well, I say, Mr. Examiner, it was the first time that a committee from our union, 1370
which was then Local D-752, had been received by the management as a union committee. They called upon the management and explained that they had been elected by the membership to represent or to seek the reemployment of John J. White who had been discharged and they were accepted as the union committee on that occasion and on the following occasion when they called upon another member of management on the same date.

Judge Ransom: Could you fix those dates a little more definitely when you claim the I.B.E.W. was recognized. 1371

The Witness: I did not say, Mr. Ransom, that the I.B.E.W. was recognized. I did not say that the union was recognized. I merely said that the union grievance committee, the union committee of men working in the company, was recognized, was accepted by the management as such.

Trial Examiner Gates: Have you fixed the date?

The Witness: The date was in the early part of November. No, wait a minute—Mr. White, I believe, was discharged on November 10th. Nego-

S. M. 432

tiations continued, or rather, he was out of work for a period of about ten days or possibly two weeks so that these meetings with the management between the committee of our members occurred several days apart, between the 10th and the 20th of the month.

Q. (By Mr. Moscovitz) Were there any other questions that you took up from time to time with the management as an officer of the I.B.E.W. local? A. I directed a letter, I think, to Mr. Carlysle, asking him to recognize that the cost of living was going up and so forth and to meet the wages that any industries were paying by giving one to the employees of the Edison System. Other than that, I do not recall anything else on that line.

1373

Q. Do you know whether or not during this period of time before the I.B.E.W. became affiliated with—before your organization became affiliated with the C.I.O., the company was engaged in any activity in opposition to the I.B.E.W.?

Judge Ransom: Objected to as incompetent, irrelevant and immaterial, calling for a conclusion.

1374

Trial Examiner Gates: He may answer.

A. Again I am at a loss for dates. However, it was reported to our executive board, and some time in 1936, after we became a part of the I.B.E.W., various members of our organization were called before their immediate

S. M. 433

supervisors and the department heads and told in no uncertain terms that the company's policy on unionism had not changed. They were just as much opposed to it, and that these men had better look out for themselves, as they had ever been in the past.

Q. (By Mr. Moscovitz) Who were these men?

Judge Ransom: Move to strike out the answer as wholly vague, indefinite and hearsay and not within any issue here.

I point out that the courts have specifically held, in respect to this Board, that that kind of statement is not testimony.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. Lewis Kricker. 1376

Q. (By Mr. Moscovitz) What company was he employed by? A. He was with the New York Edison Company, I believe.

Q. Yes. A. Then Harry Hertz.

Q. What company was he with? A. He was with the Brooklyn Edison Company.

Q. Yes. A. Saul Mirsky, with the Brooklyn Edison Company, and Arthur Tumin, with the Brooklyn Edison Company.

Q. Do you recall when that was in relation to the time of the affiliation with the C.I.O.? A. It was considerably

before that period. It was in the fall of 1936, I would judge, around September, August, September or October that these things happened.

Q. Do you know whether or not during this same period of time there were publications issued by the employees representation association? A. Yes, in July, 1936, I believe it was the company union in New York, over the signature of a Mr. Youngman issued the leaflet attacking the I.B.E.W. and practically everyone and everybody that was in it as being agitators and radicals or one, and then contradictorally racketeers for another thing.

All we were interested in was $500,000 dues each year from the employees of the Edison System.

Mr. Ransom: I move to strike out the answer as incompetent, and not a competent method of proving any fact, in no way binding on the respondents, not within the issue here.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What is the name of that
1379 publication? A. That was merely a leaflet that was issued by the company union, it was a blue leaflet.

Q. Were there leaflets similar to that distributed from time to time during that period? A. No, as I recall that was the first leaflet issued of that nature in the New York

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and Queens Company, they have a monthly or a semi-monthly news bulletin, that is in the New York and Queens Company, which they pass out which contained nothing of the sort of material that was found in this particular leaflet.

Q. Who is Mr. Youngman? A. He was at that time
1380 chairman of the plan in the New York Edison Company.

Q. You say at that time, you mean July, 1936? A. Yes, sir.

Q. And do you know what his job was in addition to that with the company? A. No, other than that he is supposed to be on the monthly payroll, he works at 15th Street somewhere, in one of the offices, a technical job.

Q. He is a lineman? A. No, he is not an outside man at all.

Q. Office man? A. I believe so, I think in the technical side.

1381

Q. Have you ever come in contact with Mr. Youngman yourself? A. No.

Judge Ransom: Well, I move to strike out the answer in respect to the pamphlet referred to on the ground that the pamphlet would be the best evidence and is not produced and that the witness'

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characterization or argument about it is wholly incompetent and not probative.

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Trial Examiner Gates: I think if the testimony stands the pamphlet should be offered.

Mr. Moscovitz: The pamphlet will be offered, Mr. Examiner, it is just a question of my checking through my files here. I have so many papers, and I will produce it before the day is finished for offer on this same paper.

Trial Examiner Gates: Do you wish to withdraw the motion?

Judge Ransom: Well, I will hold it in abeyance, I assume it will be produced.

Trial Examiner Gates: Very well.

1383

Q. (By Mr. Moscovitz) When did you first go to work for the New York and Queens Electric Light Company, Mr. Wersing? A. On the 8th day of October, October 8th, 1929.

Q. In what position? A. As second-grade clerk, cash poster at night.

Q. What were you making at that time? A. $22.00 a week.

Q. How long did you work in that position? A. Oh, for a period of four or five months and then I was put on what they call cut in and cut out.

Q. Was that night work? A. All night work, yes, sir.

Q. When were you put on cut in and cut out work?

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Were you increased in pay at that time? A. I was not.

Q. When was your next raise? A. A periodic increase came through six or eight months, about eight months after I started, some time in, I guess, June, 1930, a $2.00 increase came through, which was not because of the job classification, it was the usual thing, six months after you started, you got a $2.00 raise.

1385 Q. At that time were you doing the same kind of work? A. At that time I was doing this cut in and cut out work.

Q. What is cut in and cut out work? A. It is work in the book closing and opening, that is closing and opening the accounts of the consumers, transferring them and so on, making up their final bill and their initial bill.

Q. At that time you were not a member of any labor organization? A. No, I was not.

Q. Were you transferred to day work at any time after 1930? A. 1933, I believe it was, my chief—

1386 Q. Smith, wasn't it? A. Yes, Smith, that has been mentioned earlier, he requested that I take a transfer to day work. My immediate supervisor did not like the idea. He thought I would eventually get a supervisory job on the night force. However, it was so long coming, that I took the day job.

Q. Did the day job give you greater responsibility?

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A. Yes, in a measure it did.

Q. What was the work? A. The work was what they call expending work noting the date and the reading of the consumer's meters, extending, and so on.

Q. How many persons were doing the same kind of work? A. Oh, I should suggest approximately 50.

Q. 50? A. Yes.

Q. All inside work? A. All inside work.

Q. Was there a night force doing the same kind of work? A. No, there was not.

Q. Only a day force? A. That's right.

Q. That was still for the New York and Queens Electric Light? A. That's correct.

Q. Your entire employment was with that company, is that right? A. Correct. 1388

Q. Was there an increase in pay at that time? A. No, there was not.

Q. Did you continue throughout then in day work? A. No, I stayed for a period, I guess, about six or eight months and I found the work very distasteful and found

S. M. 439

I was not getting along too well with it, was not getting anywhere generally, so I decided to take a transfer back to the night work and see if I could get out of the company entirely, leave my days free to look for another job. 1389

Q. And when you say that you found the day work distasteful, do you mean, were you having any difficulty with the work or with any of the supervisory employees or was it just work you didn't like? A. It was work I didn't like and because I didn't like it, I didn't get along so well. It was very monotonous a job, all you did all day was jot a few things down, flip a page, jot a few more things down and flip another page, which sort of gets the best of you after a while.

Q. Now, while you were doing that work during the day time, before being transferred again to night work,

time, approximately—or possibly shortly before I received a decrease in pay, a general wage cut of $2.00 came through, putting me right back where I started.

Q. Was that for everyone? A. That's right.

Q. Throughout the system? A Yes.

Q. Throughout the system it was a $2.00 cut? A. It was a $2.00 cut and it was an eight and two-thirds cut

S. M. 440

which in my case amounted to $2.00.

1391 Q. And do you recall when that was? A. I am hazy on the exact date of that, I believe it was—

Q. Was that 1933? A I don't know whether it was '32 or '33.

Q. And when you went back to night work, did you go back at your decreased rate? A. Yes, I believe so; shortly, it was not very long after the cut came through that they restored half of it.

Q. Half the cut? A. Yes, amounting to $1.00 in my case, making it $23.00, something like that.

Q. Do you recall what time that was? A. That was probably '33, the beginning of '34.

1392 Q. Did you receive any increases from that time on? A. No, I never received an increase from then on.

Q. So your salary at that time until the time of your discharge was $21.00 a week? A. $23.00 a week.

Q. $23.00 a week? A. Yes.

Q. All right, did you request the transfer back to night work yourself? A. Yes, I did.

Q. Of whom did you make this request? A. Mr. Pro-

S. M. 441

cido, I believe.

Q. Who is he? A. He was the assistant chief of the Consumers' accounting department.

Q. Were you transferred back to night work soon after your request? A. Yes, very soon after.

Q. And did you go back doing the same kind of work that you had been doing before your transfer to day work? A. No, I went back and they put me on cash posting and would not give me my previous job, cut in and cut out man. However, I did not ask for it in the beginning and after a couple of weeks or a month went back when I did ask for it why they would not give it to me.

Q At that time you were transferred back to night work, you still were not a member of any labor organization, is that right? A. No, I was not. 1394

Q. How long after being transferred back to night work did you become a member of any other labor organization? A. Oh, it must have been a good many months. I became a member of the Brotherhood of Utility Employees in February of '34 and I was on night work before the first of the year.

Q. Did you look elsewhere during that period of time

for employment? A. Yes, immediately after I went back on night work, prohibition was just ended, and I had a 1395 number of leads on jobs with various distilling companies out of the city and there were several of the brewing companies in the city. They, however, did not work out so well so I did not leave New York and Queens as I expected.

Q. And did you then give up your idea of making a change in employment? A. Well, not immediately, I continued to look for employment until I became so thoroughly wrapped up in the union that there was nothing else to think about, or rather, I was in it, it did not leave me much time for looking for other jobs.

1396

Q. What did you do, spend your nights working and your days engaged in your union work? A. That's right.

Q. Did that start in 1934? A. 1934 that's right.

Q. And you testified already that it was then in 1934 that you organized the local of the Utility Employees organization? A. That's right.

Q. All right, now, up to this point, had any supervisory employees or representative of the company discussed union with you or had any discussion with you concerning your affiliation? A. No, no discussion.

1397

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Q. Did you after becoming a member of the Utility Employees organization take any steps to become transferred back to day work again? A. Yes, I don't know, sometime in about 1934 they started this system of posting notices of vacancies on the bulletin board so when one came along that looked half way decent, one that I could handle, I made application for it.

Q. Do you recall when after you were transferred back to night work that you made application for transfer again back to day work? A. Not until the fall of 1934.

1398

Q. Did you make any attempt to get back to day work at any time during 1935? A. Yes, that was, it was not very early in 1935 that I was passed up on this one transfer but I succeeded in getting the one that followed and naturally I was transferred.

Judge Ransom: It seems to me that we have been over this twice.

Mr. Moscovitz: Well, that is the transfer about which you have already testified. Is that correct?

The Witness: That's right.

Q. (By Mr. Moscovitz) The one that was taken up by Mr. Grulig and yourself? A. That's right.

Q. Now, in addition to the request for a transfer,

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which was taken up by yourself and Mr. Grulich, did you at any time after that make application for another transfer through Mr. Monica? A. Yes, I made—after I was informed by Mr. Schneider of the reason why I did not receive consideration for this one transfer, there appeared on the bulletin board several days after that a notice of another job vacancy for which I also applied. I received my notice this time, however, that I would get 1400
an appointment and I did. I saw a Charles Monica who is, I don't know, one of the officials in the Work Order Division of the Auditors Department. He had already interviewed several people and there were two others who were to follow me. When I saw him, Mr. Monica talked with me for a brief space of time and asked me my education, experience and so forth and said I seemed to have what was necessary and all the qualification the job seemed to possess.

With that, he went in to see Mr. Hauzenbaur, who is chief of the auditors department and spent about ten minutes away from his desk. When he returned, he 1401
seemed even more certain that the job would be mine.

This I noted because it seemed to me unusual that there should be any applicant for a job told that he would get it before all the applicants had been interviewed and I knew that there were still two more to be interviewed.

Subsequent events showed that Mr. Monica was cor-

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rect and I did get the job and I transferred, and I was transferred early in May, 1935.

1402 Q. To what job? A. To a job of second grade clerk in the stores division of the auditor department.

Q. And is that the job about which you have already testified, for which you attempted to secure reclassification? A. That is correct.

Q. At the time you were transferred to that job, you were receiving $23.00 is that right? A. Yes, that's right.

Q. And the job as previously held by first-grade clerk was paying what? A. $28.75 I believe the man that broke me in was getting.

1403 Q. Now, were you, all during this period of time, when the transfers were taking place, continuing your activity for membership in your labor organization? A. I was.

Q. During this same period of time can you tell us whether or not there were any general layoffs or layoffs of one, two or three men in your company? A. In August of 1935 there occurred the first layoff that I had the misfortune to witness amongst the office people. I believe August 20th was the exact date, 25 or more men and women from the inventory department were laid off. One

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1404 of the men in that was the secretary of our local.

Q. Had you received notice of the fact that there was going to be such layoff? A. No, sir, but we felt such a thing was in the wind.

Judge Ransom: I move to strike out the statement. If that is to become evidence, there is certainly no limit. We have had most of this witness' stuff out of the air, but now that is in the wind, gone with the wind, and I suggest that the limit ought to be drawn.

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) Did you receive any notice that there was to be a layoff? A. No. The management

never wrote to us in advance that they were going to do anything like this. We used our own judgment.

Judge Ransom: I move to strike out all after the word "No".

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Were there rumors in the plant that there was to be a layoff?

Judge Ransom: Objected to as immaterial and incompetent, not a method of proof. 1406

Trial Examiner Gates: He may answer.

A. Yes, there were many rumors to the effect that any-

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wheres from 250 in New York and Queens were to be laid off to 2500 in the entire system.

Q. Had those rumors caused concern to your labor organization? A. They did.

Q. Did you do anything about it? A. Yes, we wrote to the Governor of the State of New York requesting that he interview and prevent what we believed to be the forthcoming layoffs. 1407

Q. When was that, do you recall? A. That was in August, 1935.

Q. Did you sign— A. I did, yes.

Q. Did you sign, in your official capacity, as representative of the labor organization? A. I did.

Q. Did you communicate with anyone else? A. Yes, I believe we also communicated, in fact, I am quite sure we communicated with Mr. Maltbie, chairman of the Public Service Commission, and with Mayor LaGuardia.

Judge Ransom: I move to strike out all the testimony. The Utilities are under obligations to operate economically and efficiently. There is no

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charge here, no claim made that with respect to any of the matters embraced in this line of testimony—

Trial Examiner Gates: What do you say to that, Mr. Moscovitz?

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Mr. Moscovitz: Well, I think that if there is any question about the economic operation of the utilities, that is something that Judge Ransom can
1409 take up at the proper time. I think this witness is entitled to give testimony before his discharge, the allegation of the complaint being that he was discharged because of union activity and membership, and this is one of the elements in support of that allegation.

(Question read.)

Q. (By Mr. Moscovitz) Were you the person who communicated with those gentlemen? A. Yes.

Q. Were you concerned only about the one impending layoff or about other matters as well? A. We were concerned mostly with the layoff. There were indications
1410 that the company was about to commence, or about to try to merge its various affiliated companies into one. We felt that that might be used as a means of laying off a considerable number of employees.

Further th[illegible] that, shortly before that, in a series of paid advertisements in the newspapers, there appeared a quotation of 48,000 as being the number of employees in the Edison system, in the first of these advertisements. Mr. Smith was quoted as stating there was more than

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48,000 employees. Successively in the different advertisements in the newspapers, this dropped down to where

it numbered about 45,500. Then I believe it dropped down to 44,000. The New York "Sun" carried a quotation by one of the officials during the break-down or some occasions or other, where there were 43,000 employees, so all of these things caused us to be very apprehensive as to the fate of many thousands of employees.

Judge Ransom: Move to strike out his whole answer as not within any issue in this complaint, and wholly incompetent, and not probative as a method of showing any facts in this proceeding.

Trial Examiner Gates: Denied. 1412

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Were there any layoffs after you sent those communications to the Mayor and to the Commissioner? A. Yes, these 25 people were laid off.

Q. 1935? A. Yes, August, 1935. I have no expert knowledge as to how many were laid off in other parts of the country. It was reported to us that there were.

Q. Did you continue your fight in support of your desire to protect men from further layoffs? A. We did.

Q. What was your desire in that regard? A. Our

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desire was that there was to be no further layoffs, or no layoffs whatsoever, and our means of achieving that desire was to build the independent union strongly enough so that it could accomplish it.

Q. Were you also interested in having an organization which could take such questions up with management? A. Yes.

Q. Did you publish any literature at that time on the question of layoffs? A. Yes, we did, in Queens, we had a paper known as the "Live Wire", which came

out approximately once each month and in it were leading articles of this matter of layoffs,

Q. Were you identified with that publication? A. Yes, I believe I had a signed article in two or more editions of it.

Q. And do you recall when it was that your signed articles appeared? A. I am quite sure there was one in the October issue and possibly one in the November issue.

Q. And were those issues both before your termination of employment with the company? A. Yes, they immediately preceded my termination.

1415

Q. Did you receive any notice before November 29, 1935, that—when your employment was terminated with the company—you were to be discharged or laid off? A.

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I did not.

Q. Was there any indication in any way that you were to be discharged or laid off? A. No.

Q. Had you had any discussions before November 29, 1935 with any representative of management regarding your status with the company? A. That is as to the permanancy of jobs, no, I can't say that I had. I assumed, as did everybody else that it was a permanent job.

1416

Q. Had you, during the period of time that you worked for the company ever been discharged before? A. No.

Q. Or laid off? A. No.

Q. Didn't you, during the period of time that you were employed by the company,—had there been any other mass layoffs that you knew of in your company outside of the 25, about which you have already testified? A. Why, there was a layoff in the Subway Bureau back in

1934, of 50 or 100 people, which the union protested about and that is the only one that I knew of prior to this one I have previously mentioned.

Q. At the time of your discharge in November 29,

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1935, exactly what kind of work were you doing? A. I was in charge of inventory work on transformers and devices.

Q. Was that your sole job? A. That's all.

Q. Was there any other person in the office doing 1418
the same kind of work? A. Not the identical work.

Q. Were there any persons in the office working under you in that job? A. No.

Q. How many persons were there employed in the office at that time? A. Oh, I should judge about thirty.

Q. And were you part of a particular department? A. Yes, the auditors department.

Q. How many persons were there employed in that department? A. I couldn't say off hand, several hundred though.

Q. Where were you located? A. At 2819 Bridge Plaza, North Long Island City.

1419

Q. Had you ever been brought before a representative of management or before a personnel representative and criticized for any work that you had done during the time you were employed by the company? A. On one occasion, while doing this extending work, Mr. Procedo

S. M. 453

called me over and spoke to me about, I don't recall exactly whether it was not doing enough work and what I was doing, was not of the best, or whether it was merely a criticism on type of work.

Q. Is that the only time? A. That is the only time I have any recollection of as being important. Of course, in all these office jobs, you slip up once in a while and are, of course, told about it, and that is about all it amounts to.

Q. When was that in relation to the date of your discharge? I mean the Procedo matter? A. That was in 1933.

Q. A couple of years before? A. Yes, the fall of 1933, in 1933.

1421 Q. Have you ever been commended by anyone of your supervisors for work that you have done before your discharge in 1929? A. Well, my immediate supervisor on the night force, when I first went there, a man by the name of Michael Altman indicated his commendation by putting me unofficially in charge of this cut in and cut out work, so that I had to break in all the new fellows, run in in the day time and get extra instructions as to change in work, when the rates were changed and so forth and bring it back to the rest of the fellows, how it was to be done in the future and so forth.

Q. How long were you doing that? A. Oh, for a

1422 S. M. 454

period of a year and a half to two years.

Q. Up to what date? A. Up to 1933 when I went into the day force, and then the mere fact that Mr. J. J. Smith, the head of the department called me in and requested that I take this transfer to the day job is in itself a commendation.

Judge Ransom: I move to strike out the witness' conclusion that it was in itself a commendation.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. Well—

Q. (By Mr. Moscovitz) Why do you say that that was in itself a commendation? A. For the reason that it is an unusual procedure. It is an indication of the head of the department's interest in you if he goes so far as to call you into his private office and suggest that you take a transfer in a manner which was a promotion. A transfer from night work to day work, on an extending job is a promotion, and if there is any question on that we merely look at the wages, the wage rates now and we will find that extending is a first-grade job whereas 1424
cash posting at night is a second-grade job, while cut in and cut-out work is a second-grade job and the usual procedure for advancement is from cash poster to cut in and cut out clerk to extender in the day time.

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Q. Were there any other evidences of accommodation to you from supervisory employees? A. Yes, Mr. Grulich reported to me shortly before we were laid off that Mr. Locke had come to him and commended me quite highly to him.

Judge Ransom: I move to strike out the an- 1425
swer as highly incompetent and self-serving. Mr. Grulich is here.

The idea of having one discharged employee testify that another discharged employee commended him—

Mr. Moscovitz: I withdraw the question.

Mr. Grulich is here and I can call him later.

Q. (By Mr. Moscovitz) Was there any other statement of commendation to you or indication of commendation to you or indication of commendation to you from a supervisory employee, so far as you can recall? A. No,

not in so many words. I had many conversations with Mr. Locke and we got along splendidly.

Q. Who is Mr. Locke? A. Mr. Locke is my immediate superior. He was in charge of the stores accounts division.

Q. How many persons did he have under him? A. About thirty.

Q. Did he from time to time, up until the date of your discharge, discuss with you the work that you were doing? A. That's right.

1427

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Q. Did he give you any indication about what he felt about your work in the future in the system? A. He indicated he thought I was doing all right with it. I more or less had to make the job in view of certain changes they wanted made in the method carried on. He agreed with all the changes that I made.

Q. Have you from time to time introduced new changes into the manner in which this work was to be done? A. Yes.

Q. Were they changes which resulted in expedition?
1428 And more efficiency? A. That's right.

Q. Had he complimented you along those lines? A. I wouldn't say that he made a particular point to compliment me, but he said he was satisfied with it.

Q. He approved of what you were doing? A. Yes.

Q. Do you recall when it was that he indicated disapproval? A. At various times during the six or eight months I was on the job.

Q. In what year? A. That was 1935, May to December, I think.

Q. November, 1935? A. November, 1935.

Mr. Moscovitz: We can stop at this point, Mr. Examiner.

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Trial Examiner Gates: All right, we will recess until 2:10.

(Thereupon at 1:10 P. M., a recess was taken until 2:10 P. M.)

AFTERNOON SESSION.

Trial Examiner Gates: Proceed.

1430 Q. (By Mr. Moscovitz) You testified this morning that you had never been laid off or discharged before November, 1935, is that right? A. That's correct.

Q. Can you tell me whether or not the layoff of 25 persons to which you referred this morning affected any persons working in your department? A. No, it did not.

Q. Will you tell us what took place on the date of your discharge? A. On the morning of November 29th Mr. Grulich came over to me and said that Mr. Locke, our supervisor, had informed him that he and I were both wanted at the personnel bureau office. We went over there and spoke to the information clerk, I suppose he is called, and he said, "Sit down", and we would be called 1431 in a few minutes.

In the room when we arrived, there was one other man who like ourselves did not know exactly why he had been called up there.

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Q. What was his name? A. His name was Mannone, I believe is the correct spelling. The first name I think was Clem.

Q. Yes. A. While we were sitting there after a few minutes, of course, I happened to look up to the door

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which was the entrance through which we had to go and I saw a man pass by, that was Michael A. Wagner, who was treasurer of our local. When I saw him pass, I realized that the situation was possible a little different than I had at first suspected.

Q. Well, when you saw him go by, was he leaving the office that you were going into? A. That's correct, yes sir.

Q. And when you refer to the local what local do you refer to? A. Local 103 of the Brotherhood of Utility
1433 employees of America.

Q. Well, it was shortly after that that you went in? A. It was shortly after that that I was called in.

Q. Did you go in alone or with Mr. Grulich? A. I went in alone.

Q. Were you the first one called or was Mr. Grulich the first one called? A. No, I was the first one called.

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Q. Go ahead. A. I was told to see Mr. Payne, I did, I walked in and I was escorted to Mr. Payne's desk. Mr. Payne looked up and said, "Mr. Wersing, I have some
1434 bad news for you"?

I said, "Is that so? Let's have it."

"Won't you sit down".

I did.

He told me that they were discontinuing one of their departments and in order to make room for the married men who were in this department it was necessary for them to lay off single men from other departments.

Q. Were you single at that time? A. I was. I asked him on what basis I was chosen to be one of the single men to be laid off and he said, that it was not his choice and he did not know how it had come about.

I asked him a number of other questions as to why I, of all people, should be singled out. I pointed out that I was an official of the labor organization, one of the few in the main office building, and asked him if that had any connection. He, of course, denied that the union connection meant anything in this layoff. I repeated questions along that line but elicited no information. Neither Mr. Payne didn't know or he didn't choose to tell how I had been selected as one of the ones to be laid off. I left Mr. Payne with the question, "Do you remember a leaflet which the union recently issued entitled 'Turkey 1436
or Layoff for Thanksgiving'?"

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He said, "Yes, I remember".

I said, "Well, you haven't heard the last of this, but I want to point out in connection with that leaflet that the union made its first mistake, it knew the layoffs were coming, but it made one mistake on that leaflet and that was that it should not have been 'Turkeys or layoffs', it should have been 'Turkey and Layoffs' ".

So Mr. Payne, he gave a bashful grin and he refused to discuss the matter at all, and I was ushered out. 1437

Q. Well, when had this leaflet been distributed? A. As I recall it, that same week. I believe we started to distribute it Monday of that week or possibly Friday of the week before.

Q. When you asked Mr. Payne whether or not there had been some standard applied in the layoff of your self, did he give you any definite answer outside of saying that the married men had been laid off? A. No, he did not. You mean, the single men had been laid off.

Q. Yes, the single men. Did he make any statement as to who was going to fill your job? A. No, he did not.

Q. Did he make any statement about the layoff or discharge of other persons? A. No, he did not.

S. M. 461

As I recall it, I did ask whether or not Mr. Grulich was there for the same reason that I was, and I believe he replied Yes.

Q. And did he announce that your layoff or discharge was for the purpose of retaining married men? A. That is correct.

1439 Q. Did you point out to him the fact that there were a great number of married women who were employed in your department? A. No, I do not recall that I did point out that there were a great many married women. I did point out that there were people of less seniority than myself in the department, and I believe in the division in which I was employed.

Q. Yes, and did you tell them how many persons there were in your department who had less seniority than you? A. No, for the reason I did not know exactly.

Q. Do you know, offhand, how many persons there were employed in your department who had less seniority

1440 than you had?

Judge Ransom: He just said he didn't know.

A. I don't know exactly how many.

Q. (By Mr. Moscovitz) Do you know approximately how many?

Judge Ransom: I object to the witness guessing.

Trial Examiner Gates: He may state if he knows.

The Witness: I do not know approximately either. I do know that there were some and I pointed that out.

Q. Yes. Were you in a position to name persons employed in the department who had less seniority than you?

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A. Yes, I was.

Q. Will you name them? A. I am afraid I cannot give the names of any of them right now. My previous testimony shows, I was in this department for a rather short time. I did not go up with it. I did not see the people come in to it. I had been transferred to it. I had this information, however, from others who had been in 1442
this department for a sufficient time to know.

Q. Do you know whether or not a person was put in your job after you were let go? A. I have been informed that my job was taken by another individual.

Q. Do you know the name of that individual? A. I believe his name is John Boler.

Q. Do you know whether or not John Boler is a married or a single person? A. I don't know.

Mr. Moscovitz: I wonder if Judge Ransom has with him a record which would indicate whether or not a person was put in there, in Mr. Wersing's position, after he was discharged? 1443

Judge Ransom: That record is not here. I believe it is the fact that a man was transferred, as was stated by Mr. Wersing, a man was taken from the inventory bureau and placed in that posi-

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tion in the work order bureau of the auditors office.

Q. (By Mr. Moscovitz) You have no information as to whether or not that person was married, is that right? A. No, no, I have not.

Judge Ransom: Or as to his years of service.

Q. (By Mr. Moscovitz) Do you have any information as to his years of service? A. No, I have not.

Q. Do you have any information as to how many other persons were let go on the day that you were? A. To the best of my knowledge there were five. At least I know that there were five men laid off.

Q. Who were they? A. This man Mannone that I mentioned and another man that I formerly worked with while on the night force work by the name of Maloney, then two union officials in addition to myself.

1445 Q. Who are they? A. J. A. Grulich, vice president of the local, and Michael A. Wagner, treasurer of the local.

Judge Ransom: Do you mean six in all on that day?

The Witness: Five that I know of.

Q. (By Mr. Moscovitz) Including yourself? A. Yes.

Q. And these two other persons, Mannone and Ma-

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loney, were they members of your organization? A. They were not.

1446 Q. Do you know whether or not they were members of any organization? A. They were probably members of the company union.

Q. Do you know whether or not they were? A. Maloney I can state definitely, yes.

Q. Yes. A. Mannone, I don't know.

Q. Have you ever heard of a man by the name of Welsh? A. Yes, I have heard of him.

Q. Who is he? A. At the time I knew him, I believe he was employed in the payroll department from which he was transferred, I believe, to the inventory department.

Q. Was that a transfer into your department? A. No.

Q. Do you know whether or not he worked in your department at any time? A. He worked in my department, I believe, at one time in the work order division.

Q. Do you know whether or not he was transferred to your department after you were discharged? A. It is my understanding that he was transferred into the stores accounting division of my department after the union

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officials had been let out.

Q. Do you know what position he was transferred 1448
into? A. I understand to the position from which Mr. Grulich made his exit.

Q. Do you know what Mr. Welsh's first name is? A. I won't swear to it, but I think it was Joseph.

Q. Do you know whether or not he was married or unmarried? A. I have been informed that he was unmarried at the time he was transferred in there.

Q. Do you know what his seniority was? A. No, I don't.

Q. Do you know whether or not there remained in the employ of the company in your department many unmarried girls? A. How many I don't know; I do know 1449
that some of them were unmarried.

Q. How many girls were working in your department at the time you were let go? A. Oh, 20 or 25.

Q. Now, were they persons who were doing the kind of work that you and Mr. Grulich and the other men who were let go were doing? A. Some of them, yes.

Q. Were any of those unmarried girls let go to your knowledge? A. They were not.

Q. Do you know whether or not Mr. Payne who dis-

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charged you is a married man? A. Yes, I believe he was.

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Q. Do you know whether or not his wife was employed by the company? A. I have been so informed that she is employed by the company in the capacity of secretary to Mr.—the vice president of the company, Mr. Dean.

Q. Have Mr. Payne or Mrs. Payne been discharged or laid off? A. Not that I ever heard.

Q. After you were discharged, was your case taken up at any time with the company for the purpose of securing reinstatement? A. Yes, and immediately following my discharge we held a special meeting of the
1451 executive board of our local union which resulted in the calling of a membership meeting and a number of other meetings. The results of which were the threat to go out on strike unless reinstatement of the three union officials was affected. In the setting up of an emergency committee which called upon the management, upon Mr. Dean, to seek ways and means of amicably settling the controversy.

Q. Was the committee set up? A. It was.

Q. Who was on the committee, do you remember? A. I don't recall all of them, Mr. Kennedy was chairman of

1452 S. M. 467

the committee. On it were Ralph North, John Young, John Emler, Harry Howard, I believe, Jack Schuder, and a number of other individuals.

Q. Did the strike vote confer on the committee the right to call a strike when it deemed the strike necessary? A. It did.

Q. And did this committee take up with the management the question of means of amicably working out your difficulty? A. It did.

Q. What did it do in that regard? A. Well, as I mentioned, it called upon Mr. Dean and sought to straighten out the matter there.

Q. When was that, do you know? A. The exact date I don't recall, early in December, however, I think.

Q. Early in December? A. Yes.

Q. 1935? A. Right. Mr. Dean took the position that the company has a right to hire and fire anybody or everybody any time for any reason or no reason whatsoever and that its actions were not subject to review by any outside agency. That led to a complaint being filed with the Labor Board from which no direct results were

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attained and also a conference presided over by Mayor LaGuardia between representatives of the union and Mr. Dean, and an attorney for the management.

Q. When was that? A. That was in—that was also in December, 1935.

Q. December, 1935? A. Also early in December, 1935.

Q. And what was the result of those conferences? A. Entirely futile, the management had no intention of rectifying its error or of co-operating in any way to straighten out the matter.

Mr. Ransom: I move to strike out the witness' characterization of the attitude of the company, 1455 purely self-serving, argumentative, incompetent.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Were there any other conferences after the conference with the Mayor? A. Yes, at that time, after that then a Mr. Largay and a Mr. Wartenhauser from the State Department of Labor requested permission to attempt to straighten out this difficulty. They met with the same results that all the other agencies met with, which was nothing.

Q. And was this during the period of time when the strike vote was in effect? A. That is correct.

1456

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Q. Was anything further done after Mr. Largay and Mr. Portenell reported that they were unable to work the problem out? A. No, the course of all of this brought us right up into the holiday season. We realized, in Queens, that every indication was that the management had no desire to avoid a strike amongst the linemen, which was our main strength in Queens, and that, in order to win any such strike action, quite probably we would need the co-operation of other groups of organized employees in
1457 the system. We called upon the various locals throughout the system and they were beginning to respond. They, just as Queens Local itself, were concerned at the time, were presented with this problem, and had not given any consideration to this strike. Our whole purpose was to build an organization and we expected we would be treated with by the company on the basis of justice and equality, and would not require any serious battle which would affect the third party, the consumer.

Well, as I say, all of this brought us right up to the Christmas period, and we felt that since the consumer public opinion is probably the most important element in
1458 the power situation, that we would certainly not do ourselves any good if we called a strike and seriously inconvenienced the public and particularly at the Christmas season. For that reason we postponed action and, well, as is usual when you postpone action in a case like this

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your strength gradually begins to dwindle and nothing further was done or was able to be done.

Q. And that was the last thing that was done for the purpose of securing reinstatement, is that it? A. That is correct.

1459

Q. Do you know whether or not the company, after the strike threat was dissipated, spoke with any individual members of your organization in an effort to dissuade them from continuing their union activity? A. Yes, on a number of occasions after the strike vote was taken, we had it reported to the executive board that various individuals connected with the union have been called in by the management and subjected to—

Judge Ransom: I object to this.

The Witness: —a grilling.

1460

Trial Examiner Gates: Just a moment. When an objection is interposed, please do not answer.

Judge Ransom: I object to it as completely incompetent, indefinite and vague. Neither names or dates are specified. Such a self-serving declaration by the witness could not possibly be evidence of any probative force.

Trial Examiner Gates: You may answer it, but give the date and the name.

Judge Ransom: Exception.

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1461

A. All right. The following men reported to us that they had been called in by management: John Young from the Elmhurst Overhead Bureau; J. P. Murphy from the Cable Bureau.

Q. (By Mr. Moscovitz) Any other persons? A. There were a number of others.

Q. Do you know whether or not Mr. Murphy is still with the company? A. No, Mr. Murphy resigned from his job several months ago and is now with the Department of Sanitation of the City of New York.

Judge Ransom: I move to strike out the previous answer because it is still indefinite, mere

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characterization of "called in by the management", which means nothing, identifies nobody and could not be probative.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Will you tell us what representative of the management called these gentlemen in? A. As I recall it Mr. Werner and Mr. Warner of the Distribution Department of the New York and Queens Company both spoke with John Young.

1463 Q. What are their positions? A. Mr. Warner at that time, I believe, was assistant to the head of the distribution department, of which the Elmhurst Overhead was a

S. M. 472

Bureau, and Mr. Werner, I believe, at that time, was the head of the Elmhurst Overhead Bureau and possibly of all of the overhead bureaus.

Q. Did the report contain a statement of what it was that these gentlemen stated to Mr. Murphy and Mr. Young? A. Yes, it did. In the case of Mr. Young, he was asked why, after all of his long years of service, he

1464 should play around with a labor union; wasn't he getting along all right; wasn't he being treated fine and so forth. Mr. Young, I believe, was called in first by Mr. Werner. He managed to so successfully answer the questions put to him and the arguments advanced, that Mr. Werner decided to take him in to Mr. Warner, where the procedure was repeated. The result was that Mr. Young evidenced no desire to pull away from the union on the score of anything that had been said to him.

Q. When you were let out in November, 1935, did you receive a separation check? A. I did not, I received two weeks' salary in lieu of notice.

Q. Would—were you entitled to a separation check? A. I believe I was. The company had posted on the bulletin board schedule of separation allowances, et cetera, in July of that year which I believe was applicable to myself and when I did not receive it some months after I was fired I instituted suit. The suit, however, lost out

S. M. 473

in, I have forgotten which court it was brought up in and lack of sufficient money to carry it forward has sort of left it lay for the time being. 1466

Q. Do you know whether or not there is any difference in the classification of employees who are entitled to a separation allowance from the company? A. None that I know of.

Q. Do persons who are discharged receive separation checks? A. As a rule, I don't know that they do, from my observation the only ones I have seen—

Mr. Ransom: Just a moment, I object to this whole line of inquiry. Obviously the Labor Board has no power or occasion to review collaterally the determination of the courts of the State of New York and I may say that this case that this witness 1467
brought against the company went through to the Appellate Division. They never got a vote of any judge in any court. This Board has no power or jurisdiction or occasion to let this witness by his self-serving oral testimony review or challenge the determination of the courts of the State.

Mr. Moscovitz: Well, I am not interested in the determinations made by any state court, Mr. Examiner. It is simply a question of evidence which may be important on the question of whether or not this gentleman was discharged or laid off.

Judge Ransom: Well, this all took place months

1468 *Martin A. Wersing—For N.L.R.B.—Direct*

S. M. 474

after Wersing's discharge and he asserted his claim which was equally unfounded, as his claim before this Board. The courts naturally rejected, as I expect this Board to do.

Mr. Moscovitz: Well, sometimes the courts make mistakes and the Board does not.

Judge Ransom: Sometimes the Board makes mistakes and the courts decide it. In this case, the court was right from the start.

1469 Trial Examiner Gates: Well, I will overrule you. You may answer.

Judge Ransom: Exception.

The Witness: Would you mind repeating that question please?

(Reporter repeated the last question as follows: "Q. Do persons who are discharged receive separation checks?")

The Witness: Well, those who have been laid off in other words their exits from the company were determined as a lay off.

1470 Q. (By Mr. Moscovitz) They got separation checks as far as you know? A. Yes.

Q. Do you know of any persons who were discharged who received separation checks?

Judge Ransom: I object to that on the ground that this witness is not entitled by all the testi-

S. M. 475

mony to vary or impeach the complaint in this action or to determine what the courts have decided as to himself. The previous witness in behalf of the Board who testified under oath that he was discharged, testified that he received a

separation allowance check for seven weeks. The complaint alleges that the witness who so testified was discharged.

Mr. Moscovitz: Of course, I understand the company's position to be in these cases that these men were laid off because of the necessity of reduction. Of course, we have no answer before us yet, so that we can't be sure of the position but as I can gather it—

Judge Ransom: I will guarantee you that any day within twenty four hours after the government stops amending its complaint, that I will file an answer. I drew the last answer this morning but before I came here, that is, but I shall probably have to change it by the time I get back to the office. 1472

Mr. Moscovitz: Well, there are such things as amended answers, the complaint was issued many days before we got to hearing, and there could have been an answer before then.

Judge Ransom: My ten days is not as yet up on the last amendment.

Mr. Moscovitz: But they are certainly up on the first one. 1473

Judge Ransom: Well I have ten days from

today, if these amendments of today are allowed.

Mr. Moscovitz: Well, I can make no issue about that anyway, whether there is an answer or not is not important to me.

Trial Examiner Gates: You may answer the question.

The Witness: No, I do not know of anyone who was discharged from the New York and

1474 Queens Company who received a retirement allowance.

Q. (By Mr. Moscovitz) A separation allowance? A. Yes.

Q. And you have been called back to work for the company since November, 1935? A. I have not.

Q. Do you know whether or not there have been other reductions in your department since November, 1935? A. None that have been reported to me.

1475 Q. Do you know whether or not there have been any added, there has been added employment to your department since 1935? A. That I don't know either.

Q. You received no other income since November, 1935, than what you have already testified about as a representative of a labor organization? A. That's correct.

Q. At the time of your discharge you were receiving

S. M. 477

$23.00 a week, is that right? A. That's correct.

Q. You are desirous of going back to work with this company? A. Yes, I'll take my job back.

1476

Mr. Moscovitz: That's all.

Judge Ransom: What was the witness' answer to that?

(Reporter repeated the last answer.)

Cross Examination:

Q. (By Mr. Ransom) You said, Mr. Wersing, I think, that you went with the New York Queens Electric Light and Power Company as a second-rate clerk? A. That's correct.

Q. And that was in 1929? A. That's right.

1477

Q. And your weekly pay was $22.00 a week for the first six months and after that you got automatically $2.00 more per month? A. Not six months, I was to get a raise in six months but they were a little slow in giving it and it is probably eight months before I got it.

Q. But in any event, the entering pay was about $22.00, with a $2.00 increase after some trial period of service? A. That is correct.

Q And your work was as a night clerk, second-grade, on cash posting? A. That is correct.

1478

S. M. 478

Q. And how long did you work before the $2.00 increase became effective automatically? A. I would say about eight months.

Q. Well, will you say it is not the fact that you went to the company as a second-grade night clerk, when? A. October 8, 1929, as I recall it.

Q. And the $2.00 increase after your experimental trial period of service came on the following May? A. Something like that, yes.

Q. Would you recognize the 8th of May, 1930, as the date on which that became effective? A. I believe that is correct, yes.

1479

Q. Then you were put on this cut in and out work? A. That's right.

Q. All of this work was on consumer ledger accounts? A. That is correct.

Q. And what were your hours of work during that period? How many hours a week? A. We worked on an U. A. A. schedule, which meant that you worked no more than 37 hours a week, no less than 37 hours a week, I believe—wait a minute—the U. A. A. schedule means that you start at a certain time each night and if you get through early you get off, but you get paid for no overtime. That is the schedule we worked on.

1480 *Martin A. Wersing—For N.L.R.B.—Cross*

S. M. 479

Q. But what was your basic or normal number of hours per week? A. 38 hours a week.

Q. Now, in 1932, and for a part of 1933, you were, at your request put on day work? A. Mr. Smith requested that I take a job on day work and I did.

Q. And you did for awhile? A. Yes, that's right.

Q. And then of your own preference you went back to the night work on cash posting? A. That's right.

1481 Q. And you remained in that cash posting work up to May of 1935, night work? A. Yes, that is correct.

Q. You spoke about a decrease of your salary from the $24.00 which had been in effect since May of 1930 down to $22.00 per week. Was that in connection with the general program of the company at that time, in 1933, for spreading the work and shortening the hours? A. I know nothing about spreading the work, there was a shortening of hours.

Q. Yes. That is, the reduction from $24.00 to $22.00 per week was in connection with a reduction of all the hours of work in your department, to what per week?

1482 S. M. 480

A. 35 I believe was the basic there.

Q. Yes, then in April of 1934, as a result likewise of a general policy, in announcement of the company, one half of that reduction was restored, is that correct? A. Yes.

Q. And that restoration of your rate of pay of $23.00, was without any increase in your basis work a week, about 35 hours? A. That is correct.

Q. And $23.00 per week for a work week of 35 hours was your basis of employment at the time your employment was terminated? A. Yes.

Q. And you still remained a second grade clerk? A. That is correct.

Q. By your rating? A. Yes.

Q. Now, I think you said that the time when you first became a member of a labor organization was in February of 1934? A. That is correct also.

Q. So that from the beginning of your employment down to at least February of 1934, you had been connected with no labor organization? A. That's right.

Q. How soon after you became connected with this independent Brotherhood of Utility Employees, did you 1484

S. M. 481

become active in that organization? A. Oh, I would say within a couple of weeks.

Q. You also were perfectly open and above board about your activity in any of these labor organizations to which you belonged, were you not? A. Not always, no, I approached the union with the usual fear the employees had of being spotted.

Q. Weren't you right out in the open practically from the first as a member and officer of the Brotherhood? A. No, I became quite open after the formation of the 1485 Queens Local in July, but until that time I was not open about it.

Q. You think from February of 1934 up to July of 1934, your connection and activity in the union was not open? A. That's correct.

Q. But then later, take from July of 1934, certainly on and after that, you were completely in the open as the active officer and head of this Brotherhood, were you not? A. No, I wouldn't say that, either.

Q. Well, then, let me ask you this question: When did you first starting letters and writing and signing articles and circulating printed and mimeographed mat-

1486 *Martin A. Wersing—For N.L.R.B.—Cross*

ter which was signed by you or over your name as an officer of the Local? A. That was an evolutionary process.

S. M. 482

Q. I am asking you for a date. A. I don't know exactly the date when I first signed a letter that was going to the management, nor the exact date when I first signed a leaflet that was distributed to the employees of the company.

1487 Q. Well, can't you give this Board any idea as to when you first started sending these communications and publishing these circulars over your name? A. My first open activity was in distributing circulars.

Q. When was that? A. That was in May, 1934; I probably started to do that sort of work.

Q. Yes, it was— A. Late in 1934.

Q. Very soon after you became president? A. Several months after that, possibly.

Q. Well, when did you become president of that Local? A. In July, 1934.

Q. Well, certainly within a month or two after that
1488 you would recognize now that you started what you may call open publicity over your own signature as president in behalf of the activities of that local, would you not? A. I wouldn't say too positively, no, I don't recall.

Q. Haven't you any— A. I don't recall the date of the first circular that went out with my name signed to it.

S. M. 483

Q. Haven't you any copies of the circulars with you? A. Not with me, no, I doubt if there is a date on them.

Q. Haven't you supplied any to Mr. Moscovitz? A. Of those particular circulars?

[redacted]

Supreme Court of the United States

OCTOBER TERM, 1938

No. 19

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ITS AFFILIATED COMPANIES, ET AL., PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD ET AL.

No. 25

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. [illegible], ET AL., PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED { APRIL 1, 1938. APRIL 17, 1938.

CERTIORARI GRANTED MAY 16, 1938.

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WITNESSES FOR THE BOARD

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J. GREULICH:		
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WM. J. KENNEDY:		
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Note: The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the *Stenographic Minutes*, as well as the numbering of the *printed* pages. The pages of the Stenographic Minutes are referred to as S. M.; the pages of the printed record as R.

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WM. CHANDLEY:		
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HAROLD C. DEAN:		
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Note: The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the *Stenographic Minutes*, as well as the numbering of the *printed* pages. The pages of the Stenographic Minutes are referred to as S. M.; the pages of the printed record as R.

BOARD'S EXHIBITS

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
1	Charge filed with the Board by United Electrical and Radio Workers affiliated with the Committee for Industrial Organization, dated May 5, 1937			4	135	4
	Complaint issued by the Board, by its Regional Director for the Second Region, dated May 12, 1937 (with the various subsequent amendments shown)			4	135	7
	Acknowledgments and proofs of service of the complaint and notice of hearing			4	135	17
	Amended notice of hearing, dated May 25, 1937, issued by the Board			4	135	34
	Affidavit of service of amended notice of hearing			4	135	35
2	Stipulation of facts for the determination of the question of jurisdiction			23	151	1318
3	Pamphlet issued by the Consolidated Edison Company of New York, Inc., in August, 1936, entitled "Serving New York, electricity, gas, steam" (not printed; may be referred to in the Transcript of Record filed)			24	152	
4	Copy of an Order of the Board, dated June 2, 1937, denying the petition and motion of the respondent Companies for a prior and separate hearing as to jurisdiction and for dismissal of the complaint for want of jurisdiction			41	166	38
5	Notice of motion by the Board, served on respondent Companies on June 9, 1937, to amend its complaint by adding the name of Stephen L. Solosy as one of the persons named in Paragraph 19 of the original complaint as having been discharged by respondent Companies			41	166	40
	One side of an application or pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed)	177	270	179	271	

Note: By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.

Board's Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
7	The other half of a pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed)	178	270	179	271	
8	Copy of the Constitution and By-laws of the United Electrical and Radio Workers of America (not printed; may be referred to in the Transcript of Record filed)			373	413	
9	Constitution of the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor (not printed; may be referred to in the Transcript of Record filed)	382	420	1500	1252	
10	Letter dated November 1, 1934, from Mr. Wersing to Mr. Kennedy			714	670	1390
11	Copy of the Employees' Representation Plan of The New York Edison Company, Inc. (not printed; may be referred to in the Transcript of Record filed)			879	787	
12	Reply dated January 4, 1937, of Mr. Edward P. Prezzano to Mr. Straub's letter (Respondents' Exhibit No. 15)			945, 1500	839, 1252	1391
13	(Produced at the request of the Board) Letter from Mr. D. W. Tracy, President of the International Brotherhood of Electrical Workers, to Mr. Floyd L. Carlisle, dated April 16, 1937			987, 1500	871, 1252	1392
13 (a)	(Produced at the request of the Board) Reply by Mr. Carlisle to Mr. Tracy, dated April 20, 1937			987, 1500	871, 1252	1393
14	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and International Brotherhood of Electrical Workers through its Local Union B829, dated June 15, 1937	987	871	1448	1213	1394
15	Letter from Mr. D. W. Tracy to Mr. Ganley, dated April 21, 1937			1027	903	1406
16	Notice by employees of Westchester Lighting Company that the International Brotherhood of Electrical Workers Local B832 had become the bargaining agent for its members among the employees of Westchester Lighting Company (not printed; may be referred to in the Transcript of Record					

Board's Exhibits (Continued)

Exhibit No.		Marked for Identification S. M. Page	Marked for Identification Printed Page	In evidence S. M. Page	In evidence Printed Page	Printed at Page
17	(Produced at the request of the Board) Photostat copy of the employment record of Eleanor Misbach for the months of April and May, 1937 (not printed; may be referred to in the Transcript of Record filed)	1229	1050	1230	1051	
18 (a), (b), (c).	(Produced at the request of the Board) Photostat copies of employment record of Eleanor Misbach for October and December, 1936, and February, 1937 (not printed; may be referred to in the Transcript of Record filed)			1236	1055	
19 (1)	(Produced at the request of the Board) Foreman's daily report and attached work order of May 12, 1937, as to A. Martini (not printed; may be referred to in the Transcript of Record filed)			1249	1065	
19 (2)	(Produced at the request of the Board) List of the Delegates and Officers of the Employees' Representation Plan, with their employment records, showing any overtime (not printed; may be referred to in the Transcript of Record filed)			1412	1184	
20	(Produced at the request of the Board) Summary of charges and accounts covering "general welfare—collective bargaining" and "employees' representation plan" accounts—1934-1937 (not printed; may be referred to in the Transcript of Record filed)			1433	1202	

EXHIBITS OF RESPONDENT COMPANIES (PETITIONERS HEREIN)

1	Certified copy of judgment roll filed June 2, 1937, in *Consolidated Edison Company of New York, Inc., et al.*, v. *Lamar Hardy, et al.*, District Court of the United States for the Southern District of New York, Index No. *Eq. 81-377* (not printed; may be referred to in the Transcript of Record filed)			34	160	

Note: By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.

Respondents' Exhibits (Continued)

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	Praecipe			34	160	
	Subpoena and Complaint			34	160	
	Special Appearance and Motion to Dismiss			34	160	
	Order of January 17, 1936, with Notice of Settlement vacating service of the subpoena in equity upon certain defendants			34	160	
	Stipulation and Order *pro confesso*, dated January 29, 1936			34	160	
	Order *pro confesso*, dated March 10, 1936			34	160	
	Order of April 14, 1936, by Honorable Henry W. Goddard, United States District Court, substituting the name of Consolidated Edison Company of New York, Inc., in place and stead of the name "Consolidated Gas Company of New York" (with affidavit on which Order was granted)			34	160	
	Decree *pro confesso*, dated October 23, 1936			34	160	
	(The above documents from the judgment-roll are not printed herein, but may be referred to in the Transcript of Record filed.)					
2	Certified copy of the Opinion of Caffey, *U.S.D.J.*, in entering the above judgment			34	160	140
3	Notice of motion by respondent Companies, with affidavit, dated May 17, 1937, for prior and separate hearing as to jurisdiction and to dismiss complaint and charge for want of jurisdiction (Part of Board's Exhibit No. 1)					1
4	(Produced at the request of the Board) Employee rating card of Mr. William J. Kennedy (not printed; may be referred to in the Transcript of Record filed)	714	670	1523	1269	
5	(Produced at the request of the Board) Letter of Mr. John F. Emler to Mr. Frank W. Smith, dated November 20, 1936 (not printed; may be referred to in the Transcript of Record filed)			756	701	

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
6	(Produced at the request of the Board) Employee rating card of John F. Emler (not printed; may be referred to in the Transcript of Record filed)	756	701	1523	1269	
7	Verified answer on behalf of the respondent Companies to the complaint of the Board as amended as to June 14, 1937....	901	804	1501	1253	42
8	Copy of Employees' Representation Plan adopted by employees of The Bronx Gas and Electric Company (not printed; may be referred to in the Transcript of Record filed)	912	812	931	827	
9(1)	Letter, dated July 15, 1936, from Harry J. Straub, Chairman, Third General Council of the Employees' Representation Plan of The Bronx Gas and Electric Company, to Mr. E. P. Prezzano (not printed; may be referred to in the Transcript of Record filed)			926	823	
9(2)	Mimeographed circular requesting a vote by employees of The Bronx Gas and Electric Company on a plan of electing representatives for collective bargaining (not printed; may be referred to in the Transcript of Record filed)	920	826	930	826	
10	Printed communication to the employees of The Bronx Gas and Electric Company, dated April 11, 1934, accompanying copy of the Plan (Exhibit No. 8) (not printed; may be referred to in the Transcript of Record filed)			931	827	
11	Printed letter on the letter-head of The Bronx Gas and Electric Company, dated April 11, 1934 (not printed; may be referred to in the Transcript of Record filed)	931	828	1500	1252	
12	Form of ballot used by employees in electing tellers to conduct their vote on April 17, 1934 (not printed; may be referred to in the Transcript of Record filed)			932	828	
13	Form of ballot containing propositions voted on by the employees in the election of April 17, 1934 (not printed; may be referred to in the Transcript of Record filed)			932	829	

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification S. M. Page	Marked for Identification Printed Page	In evidence S. M. Page	In evidence Printed Page	Printed at Page
14	Enrollment blank for enrollment of employees to vote and take part in the nomination and election of representatives under the Employees' Representation Plan (not printed; may be referred to in the Transcript of Record filed)	934	830			
15	Letter of Mr. Harry J. Straub to Mr. Edward P. Prezzano, President of the Westchester Lighting Company and The Bronx Gas and Electric Company			935	831	1416
16	Membership of employees in the Local Unions of the International Brotherhood of Electrical Workers having collective bargaining contracts with Companies of the Consolidated Edison Company group of Companies			1448	1212	1418
17	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B830 (gas employees), dated June 15, 1937	1470	1229	1471	1230	1419
18	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B829 (electric employees), dated June 15, 1937 (printed as Board's Exhibit No. 14)	1470	1229	1471	1230	1394
19*	(Produced at the request of the Board) Memorandum of Agreement between Brooklyn Edison Company, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B825, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed)	1470	1229	1471	1230	
20*	(Produced at the request of the Board) Memorandum of Agreement between New York and Queens Electric Light and Power Company and the International Brotherhood of Electrical Workers, and					

* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification S. M. Page	Marked for Identification Printed Page	In evidence S. M. Page	In evidence Printed Page	Printed at Page
	its Local Union No. B839, dated June 1, 1937 (not printed; may be referred to in the Transcript of Record filed)	1470	1229	1471	1230	
21*	(Produced at the request of the Board) Memorandum of Agreement between Westchester Lighting Company and The Yonkers Electric Light and Power Company and the International Brotherhood of Electrical Workers, and its Local Union No. B832, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed)	1471	1229	1471	1230	
22*	(Produced at the request of the Board) Memorandum of Agreement between New York Steam Corporation and the International Brotherhood of Electrical Workers, and its Local Union No. B826, dated June 16, 1937 (not printed; may be referred to in the Transcript of Record filed)	1471	1229	1471	1230	
23	(Produced at the request of the Board) Memorandum of Agreement between the International Electrical Workers Union and its Local Union No. 3 (Inside Workers), and The New York Edison Company, dated January 29, 1924 (not printed; may be referred to in the Transcript of Record filed)			1495	1248	
24	Pamphlet entitled "A Call for Special Vote by All Employees of The New York Edison Company and The United Electric Light and Power Company," to be held on November 22, 1933, with copy of Plan for Collective Bargaining Through Employee Representation			1502	1254	1431
25	Letter dated June 28, 1937, to the National Labor Relations Board, from counsel for the respondent Companies			1577	1309	1463
25(a)	Reply by the National Labor Relations Board, dated July 2, 1937, to the letter of June 28, 1937, from counsel for the respondent Companies			1577	1309	1467

* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.

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Q. Yes. A. I don't think so.

Q. Are you sure about that? A. I am sure that I did not supply them, if that's what you mean.

Q. You are sure that you have none here? A. I have not any, no.

Q. You spoke this morning of your request to Mr. Sneider some time in March or April of 1935 to be transferred from this night work on cash posting to a day job? A. That's correct.

Q. And certainly long before that you had been openly circularizing employees and publishing interviews and 1490
articles in the paper over your name as president of the local, hadn't you? A. That depends on what you mean by "long".

Q. Well, I— A. A period of several months, I would say yes, but—

Q. A period, say, of at least six months before April of 1935? A. It is quite possible, yes.

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Q. Well, wouldn't you recognize it as certainly at least six months before that that you were openly and notoriously the president of this local union of the 1491
Brotherhood? A. I resent the "notoriously".

Q. Well, perhaps I am using the expression of the word more accurately than you would, but as a matter of common knowledge, you weren't concealing it, were you, in the newspapers and in the circulars and in the magazines or leaflets which you handed out, weren't you known as the president of this independent Brotherhood? A. Yes, I was, I would say I was, in the Queens Local.

Q. And it had been for—that had been true for at least six months before you made this application for transfer to day work? A. Yes, I think so.

Q. And when was the transfer to day work granted? A. I believe I started the work on day work in the stores accounts division on May 1, 1935.

Q. So that was within—within a very short time after you had made the request of Mr. Sneider for the transfer? A. Correct.

Q. And when you speak of Mr. Sneider, you are referring to Mr. Harry L. Sneider, who was formerly the president of the New York Queens Electric Light & Power Company, but who retired a year or two ago?

1493

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A. That's right.

Q. Now, that transferred you to the auditor's department, and in what bureau? A. When I first started off, I think, well the job was in the inventory section of the company, I was supposed to be in, however, the stores accounting division which, after I learned the routine of the job, in a couple of days, I went up there.

Q. And that was what was known—were you in what is known as the work order bureau? A. Yes, sir.

Q. And your rating there was still as a second grade
1494 clerk? A. That's right.

Q. You spoke about thereafter making an application to be changed, have your rating changed to that of a first grade clerk because the man who had previously had the job was a first grade clerk. A. Yes.

Q. Do you know how long he has held the job before he became a first rate clerk? A. No.

Q. That is an answer. A. Okay.

Q. You don't suggest to this Board that there was anything unusual either in your applying to have your

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rating raised from second grade to first grade clerk, or

that there was anything unusual in that request not being granted within a few months after you entered the bureau? A. I think the facts speak for themselves.

Q. All right, now, isn't it a fact that such applications for raises in the ratings from second grade to first grade clerk were numerous and frequent in the clerical, among the clerical employees of the company? A. I knew of the few people who have tried it.

Q. Now, you spoke this morning as though you regarded your promotion in May of 1935 to day work in this work order bureau as a promotion, I think you said, 1496
a somewhat unusual, as a recognition of your ability and service? A. No, I didn't.

Q. But you at least regarded it as a promotion? A. Yes, I would think it was a promotion.

Q. Have you so testified this morning? A. No, I didn't.

Q. The record then will speak for itself, but in any event, it was a change to a status which you wanted, namely, day employment, and in a different bureau or department? A. That is correct.

Q. About how many employees has this New York & Queens Electric Light & Power Company, or did it have, when you were in its employ? A. When I left, there were 1497

about 4800.

Q. And how many employees, do you know, were there in the accounting department? A. What do you include in the accounting department?

Q. Well, let us take, well, what you might call the accounting and bookkeeping departments, the Consolidated accounting, bookkeeping or, if you want, how many were there in the department in which you did first class posting work? A. I believe there was something like six, seven hundred in that department.

Q. And do you know how many there were in the whole accounting department? A. Offhand, I do not.

Q. Now, can you give any idea at all? A. Well, in the main office in Long Island City I would say there were probably 1500.

Q. And how many employees were there during the period of your employment in the auditors' department? A. Well, in the work order and storage accounts, I believe the payroll was also part of the auditors, there were probably two, two hundred and fifty, possibly slightly more.

1499

Q. You spoke this morning about your present employment with the C.I.O., or with the Utilities Division of the C.I.O.? A. Yes.

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Q. That is something which has been in progress since about the first of June of this year? A. That's right.

Q. And you spoke about your salary in that organization as now $40 per week? A. That is correct.

Q. Is there any contract or memorandum of the terms of your employment in writing? A. No, there is not.

1500

Q. Is the arrangement purely oral? A. Yes.

Q. There is nothing in writing about it that you have ever seen? A. Not that I have ever seen, except the credentials.

Q. When, during the period that you were a member and president and business manager of the Independent Brotherhood of Utility Employees, how many paid-up members did this Queens Local have?

The Witness: Shall I answer that?

Trial Examiner Gates: What reason do you have for not wanting to answer?

1501

The Witness: We, by executive board order, had, at that time, an order making it mandatory upon all officials not to submit the number of members paid up or otherwise.

Judge Ransom: I submit, Mr. Examiner, that

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this organization may not have had many members, but if they had a few hundred out of 4800 employees, if the claim is that out of the several hundred discharges and terminations of employ- 1502
ment took place during that time, that there were some officers and some members of this brotherhood, we are entitled, certainly, to show that nothing of the sort happened to a vastly greater number.

Trial Examiner Gates: Would there necessarily be any relationship between the membership of the Brotherhood and the present membership in the U.E.&R.W.? It is about the Brotherhood you are inquiring, is it not, Judge Ransom?

Judge Ransom: I am inquiring now about the Independent Brotherhood.

1503

The Witness: Well, I do not believe there would be any connection that might benefit the management between the old membership rolls and the present one.

Trial Examiner Gates: If you have any good reason for being reluctant to answer, why, we will be glad to consider it further, but otherwise I will ask you to answer the question.

The Board, of course, recognizes membership in unions is a matter which perhaps at times should not be disclosed.

The Witness: May I ask you one more question, Mr. Examiner, and that might straighten me

out. I have no objection as much to revealing the membership in certain departments as I do have

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to revealing it in other departments where the membership is unknown. Now, if Mr. Ransom has further questions along that line, if he wants to specify it more, then I certainly would request that I be not compelled to answer the question.

1505 Judge Ransom: I am asking now as to the over-all membership of paid-up members, members who have paid their dues in the Independent Brotherhood, Queens Local. I am asking this witness to state under oath what he says as to that membership.

Trial Examiner Gates: Will you state it?

The Witness: Yes, I will state it, but I will appeal to you if he insists upon any more detailed information as to where these members, as to what their connection there might be between those members and the ones we have now. At that time, as I recall it, we had approximately 300 paid up members in the Independent Union.

1506 Q. (By Judge Ransom) And that included, I think you said, both persons who were then employees of the company and those who were former employees of the company? A. As of what date?

Q. Well, as of any date during your connection with the Brotherhood. A. Well, during my connection with the Independent Union, outside of Mr. Wrench, who was discharged or laid off by the company, they were all em-

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ployees of the company until the management added a few more unemployed to the rolls.

Q. But the Brotherhood, the Independent Queens Local union membership was open to former as well as existing employees of the company? A. It was not.

Q. You did not mean to state to the contrary this morning? A. I stated this morning that the rolls consisted of employees and former employees of the company, by that I meant, if you wish me to elaborate on it, I will.

Q. Well, you had better explain what you meant. A. All right, well, you were eligible for membership only if you were an employee and like the company union, once 1508
you became laid off, we did not throw you out of the union, you retained your membership, that is what I meant by that.

Q. What you have persistently called "The company union," you mean the system, the plan, as they call it. A. Well—

Q. The plan under which the employees voted and shows their council and representatives for collective bargaining, is that correct? A. That is correct.

Q. How many paid up members did your local union of the I.B.E.W. have during the period of your connection with it? A. About double the amount the Queens had, I should say. 1509

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Q. You mean about double the amount that your Independent Brotherhood Local had had? A. Yes, pretty close to that.

Q. That is somewhere between five and six hundred? A. I think so, yes.

Q. And those were members with dues fully paid? A. They were members which we regarded as being in good standing, I don't know, I have never checked up to see exactly how many members we had or exactly what the status of each and every one of them was.

1510 Q. That is, you are surely not meaning to testify that either the Brotherhood or the I.B.E.W. Local had three hundred or five hundred or six hundred, in either case of members with their dues paid up? A. I said that if they were in good standing with the local union.

Q. Well, was good standing contingent upon keeping dues paid to date? A. Within a period of three months.

Q. Within a period of three months? A. Yes, that is the common practice.

Q. You said this morning that up to the time that your
1511 local of the I.B.E.W. was formed, or at least up to the time of the formation of the local of the Independent Brotherhood, that you had known of no other labor organization in the Consolidated Edison group of companies,

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by that you did not mean that there were no labor organizations with which the Consolidated Edison had outstanding labor contracts, did you? A. No, that—

Q. That is, you realized, did you not, and knew that since 1924 the New York Edison Company had had an outstanding contract with the International Brotherhood
1512 of Electrical Workers? A. Yes, I had read the contract.

Q. In the summer of 1934 you say that you had some others in your department, which was then the Consolidated bookkeeping department of the Queens' Company, presented to your council under the employees representation plan, a petition about wages and employment conditions? A. Yes, sir.

Q. Do you say that petition was under consideration by the council members for one or two months? A. Yes.

Q. Is that correct? A. That's correct.

Q. And that they never did anything about it? A. That's right.

Q. You said that? A. Yes.

S. M. 494

Q. And that they declined to present it to the company or demand action upon it? A. That is correct.

Q. Well, that same spring in 1934, you, as an employee who was already a member of the Independent Brotherhood of Utility Employees, ran for office under this employees representation plan for election as a member of your bureau council? A. That is right.

Q. You were nominated by the petition of the employees of your bureau, some of them? A. As I mentioned before, I don't recall the exact form in which the 1514
nomination came about, it was either by petition or on the nominating ballot, it was written in by some of my fellow employees.

Q. In any event, the nomination and the placing of your name on the ballot which was voted for was the action of the employees in your bureau and not your own action? A. That is right.

Q. You did not put yourself up as a candidate, they put you up? A. Well, I figured my willingness—

Q. You were willing? A. Yes.

Q. You had to sign that you were willing to be a candidate? A. Yes. 1515

S. M. 495

Q. But they nominated you? A. That's correct.

Q. And you were balloted on by the employees of your bureau under a secret ballot? A. That's right.

Q. About how many employees were there in your bureau at that time? A. Well, all told, in the consumers accounting, there were six or seven hundred people.

Q. Well, that was the unit? A. Yes, now just what part of those participated in the balloting in my particular section, I don't know, the night force, you see, while a section by itself is not entitled to its own representative

1516 having less than fifty people employed in it, so they were mixed in with others.

Q. That is presumably the unit for which the council representing the employees was being nominated and elected was the whole bureau, whether day or night, was it not? A. They were different divisions in the bureau.

Q. Well, do you think the unit was a division within the bureau or the bureau as a whole? A. No, the election was carried out through divisions, with those employees over and above having the privilege of electing a council-
1517 man at large, it was divided into sections of 50, one councilman for each 50 people.

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Q. Well, are you able to give any idea as to the number of employees within the unit for which this election took place? A. I received 112 votes, the four of us had within about eight votes of each other, the top man received 120, so I imagine there must have been about that many people involved in our particular division.

Q. So the total number would be something more than 120? A. Yes.

1518 Q. When was this, what you refer to as a plebiscite or referendum vote of employees of the whole company to get the continuance of the system of electing employee representatives in effect? A. At the election period following the formation, the second election, following the formation of 1935, in April or May, the end of April or the first of May.

Q. The plan having been put into effect in 1933? A. '34.

Q. '34? A. Yes.

Q. That was at the time of the second election? A. That's right.

1519

Q. And did all the employees ballot upon that question at that time? A. Yes, just as they did the first year, they balloted the second year.

S. M. 497

Q. Do you know what the approximate vote was upon that issue, as to 1935 referendum on the continuance of the electoral plan? A. Yes, there were about 4400 votes cast, 2400 were in favor of continuing the plan.

Q. How many in opposition? A. There were approximately one thousand void, and a thousand "noes."

1520

Q. Did you mean in any way to suggest to this Board that whatever took place as to the discharge of James Mannix was a matter for grievance in any respect? A. No, I did not suggest that. I suggested it was, I stated, rather, it was the business of the local union to protect, if possible, its membership and do whatever it could for any one of its members. I did not say that this particular case, however, presented a just grievance.

Q. And you do not suggest now that there was anything involving labor organization, or any matter of grievance involved in the discharge of Mannix? A. I do not.

1521

Q. But you knew then and you know now it had nothing to do with labor matters, don't you? A. I did not know then. I did not know until after we made our investigation. Then I knew, as I know, that it did not

S. M. 498

involve, so far as we could determine, any issue of unionism. The matters for which Mr. Mannix was discharged were quite justified.

Q. Were what? A. Quite justified.

Q. Now, during the period during which you were in the International Brotherhood of Electrical Workers, he

1522 *Martin A. Wersing—For N.L.R.B.—Cross*

spoke of the incident relative to the discharge or lay-off of, I think it was, James White, an employee. A. John J. White.

Q. John J. White, an employee of the Brooklyn Edison Company? A. Yes.

Q. And his suggestion, I understood you, that that was the first time that the management of any one of the companies had recognized your union, in that they received a committee of fellow employees who were members of the union, and discussed with them the circum-
1523 stances of the termination of Mr. White's employment? A. Yes.

Q. That matter was handled entirely by employees with the management, the Brooklyn Edison Company? A. Not entirely.

Q. Well, so far as the negotiations with the management? A. As far as presenting the facts were concerned, and so forth, yes.

S. M. 499

Q. So far as the general planning and oversight of the matter, was the International Union in the picture?
1524 A. No.

Q. Or the local union officers? A. Local Union—

Q. What? A. Local union officers, yes.

Q. Well, in any event, through the negotiations conducted by this committee of employees, you say that they were able to bring about, did bring about, Mr. White's reinstatement in employment? A. Yes, I think that is accurate. It is not as complete a picture as it might be—

Q. I assume you would like to paint it more, but in any event, Mr. White went back to work? A. Still at work, so far as I know.

Q. And you attribute that to the activities of a committee of employees acting at the instance of a local union of the I.B.E.W.? A. That's right.

Q. You were doing just what work at this work order bureau from the time that you were transferred at your request in May of 1935? A. I was keeping the store's record of transformers and devices used by the New York & Queens.

S. M. 500

Q. Well, now, the stores record, of course, is a part of the continuing operations of the company; is it not? A. It is a loose-leaf perpetual inventory record.

Q. And you spoke of work at the inventory depart- 1526
ment. What was your relation, if any, to that, during the period of your employment in the audit work or bureau? A. You mean how did I come in contact with it in my work?

Q. I mean, were you doing any of that work? A. No, some of the records which I had occasion to use, they kept. Theirs was a continuous property inventory and they, of course, had a card index on transformers which were out of service, and when one was put on the line, I had to go to the department and pull that particular card and pull it with the in-service, and so forth.

However, I was not connected with it. 1527

Q. When you speak of "they", you mean the inventory department? A. That's right.

Q. The inventory department was another department of the company? A. That's right.

Q. Is that an accurate statement of the matter? That in 1933-1934, there had arisen on the part of the company a need for a continuing property record of their physical

S. M. 501

property? A. I don't know the exact date, but I believe the Public Service Commission requested or instructed them to compile such a record.

Q. Well, now, isn't it a fact that this work of preparing what is called a continuing property record, inventory of property, was started and proceeded with under very great pressure by the company, quite a while before there was any order from the Commission which fixed a definite basis or requirement? A. I don't know. The job originally was with fixed capital and it was temporarily in the inventory until they found a permanent place for it in the stores account. That was because of the set-up in the department.

1529 Q. That is, then, as you understand it, is this the picture, that for some years the company had had, was keeping what you might call, a continuous property record, and that was in what department, do you know? A. No, I don't.

Q. But was it part of what is called a fixed capital bureau, or anything of that sort? A. It was a fixed capital bureau.

Q. And they kept a continuing record of physical property by classifications? A. Yes, I believe they did.

S. M. 502

1530 Q. And then there came an occasion for setting up what was called an inventory department? A. Yes.

S. M. 503

Q. And you know how large a department that quite suddenly came to be? A. Yes, I imagine it must have been two or three hundred people in it at one time in Queens.

Q. Now, were those the employees that were in this inventory department for the purposes of that special work, were they men who largely had been brought into that department by transfers from other departments of

that company or of other companies? A. Yes, that's right.

Q. What? A. That's right.

Q. Do you know then whether there then came a time when the need for maintaining so large a force on the inventory work passed and they began to cut down on the inventory department employees? A. No, I do not know.

Q. As far as you know, did the personnel of the inventory department continue with the number that you have stated? A. No, I know it was decreased, you asked me whether or not if I knew of the need for it decreased. 1532
I don't know that such a need did decrease.

Q. Well, in any event there came a time when this large force which has been assembled by transfer from other departments, they began to cut it down? A. That's

S. M. 504

right.

Q. And that reduction took place in the latter part of 1935 and '36? A. That is right.

Q. And do you happen to know whether at that time the work of a continuing property record for this company was placed on what you might call a permanent 1533
basis as the result of orders from the Public Service Commission on the subject? A. No, I don't. The only thing I remember in that connection is the hearing Mr. Maltbie of the Public Service Commission tell the Company to get busy and finish the records and that they took on more people, as I understood from that point on.

Q. Can you fix the time of any such statements? A. Well, the merger hearings were last summer, some time.

Q. The—do you mean the merger hearings in which you participated? A. That is right.

Q. Wasn't there an order of the Commission which put that fixed capital work of the continuing property

record work on a permanent basis and as a result of which the work was put into the accounting department? A. That I don't recall.

Q. You wouldn't say that that was not the case? A. No, I did not follow that particular phase of it.

S. M. 505.

Q. And you know that when this fixed capital work was put on a permanent basis that the old inventory force was very much reduced in number? A. No, I don't.

1535 Q. You don't know that? A. No.

Q. Did you mean to leave the impression this morning or this afternoon that only the five persons whom you mentioned were all those employees whose employment was terminated in November, of 1936, on a certain day or at any other time? A. I neither wished to leave the impression or did I so state. I merely stated to my knowledge, my personal knowledge, five people were let go on that afternoon.

Mr. Moscovitz: You mean 1936 or '33?

Judge Ransom: 1935.

1536 The Witness: 1935, I did not mean for the entire month of November either, just the one day, the people I saw, so I know, the 19th of November.

Q. (By Mr. Ransom) You received, you stated, what was called the two weeks allowance of pay at the time your employment was terminted? A. No, I received two weeks salary in lieu of notice, it was not an allowance.

Q. That is your construction of it? A. That is it.

S. M. 506.

Q. You did not receive the separation allowance which was later put in force as to employees whose employment was terminated? A. No, nor did I receive the

separation allowance which had previously been put in force.

Q. Well, that is another question, but in any event you and Mr. Grulich and others brought a suit in the municipal court, did you not? A. That is correct.

Q. And you stated that that grievance in that respect to your counsel? A. That's correct.

Q. Who was your attorney, by the way? A. Charles Bellows.

Q. Were you responsible for the bringing of that action? 1538

Mr. Moscovitz: I object to that question, Mr. Examiner.

Mr. Ransom: I just wanted to connect it.

Mr. Moscovitz: I don't think that is a connection of any importance.

Q. (By Mr. Ransom) He represented you in that action, did he not? A. Yes he did.

Q. And you brought to his attention the facts as to the circumstances under which your employment was terminated? A. Yes, I did.

S. M. 507 1539

Q. And you brought the suit to establish the claim of rights which you have asserted here on the stand? A. Yes.

Q. And that's true also of Mr. Grulich? A. Yes.

Q. Grulich? A. Yes.

Q. Mr. Wagner? A. That's right.

Q. Mr. Kennedy? A. No.

Q. Not Mr. Kennedy? A. No.

Q. Not Mr. Kennedy, the name escapes me for the moment; who was the other one? A. Just the three, there are only three.

1540 *Martin A. Wersing—For N.L.R.B.—Cross*

Q. Only you three brought the suit? A. Yes.

Q. And that suit was brought in your behalf in the Municipal Court and later carried to the Appellate Term and to the Appellate Division, is that right? A. I believe it is, I don't know for sure.

Q. And the judgment was in each court against your claim? A. That's right.

Q. And you went carefully into the facts regarding

S. M. 508

1541 your termination of service with Mr. Bellows, didn't you? A. No, I did not.

Q. Who did? A. Mr. Grulich handled most of that end of it.

Q. That's what I wanted to get at, it was Mr. Grulich who really was the motivating spirit in handling the litigations, he was the first of the three plaintiffs I believe? A. I believe he was named at first, yes, however it was not so much as you have described it as it was that it was not necessary for three of us to be constantly on the job with the attorneys, it was necessary for only one and Mr. Grulich did that.

1542 Q. In any event, you asserted this claim of rights in the court and were defeated in the final court, to which the case could be carried? A. Did you say to which it could be carried?

Q. Yes. A. Well, I don't know, I am not acquainted with court procedure to know whether it can be carried any further or not.

Q. I am not sure that the record is clear or that I am clear in my own mind, as to just what relation the work which you were doing in '35, after May, down to the time of your discharge, had to do with this inventory work under the Public Service Commission plan for continuing property records, could you describe that a little more

S. M. 509

in detail? A. I could not. It was not necessary for me to be familiar with the uniform system of accounts that the Public Service Commission had drawn up, and it was not, none of my work had any connection with the work done by the inventory, my work was confined solely to the stores account division, that is so far as my own supervisor was concerned, he intimated nothing that would lead me to believe that there was any direct connection with the inventory department.

1544

Q. That was aside from such use as you made of the inventory department records, or as they made of your records, you think there was no connection? A. That's right.

Q. Do you know a Mr. F. Hibetts? A. Tibbets?

Q. Hibetts, who was in the employ of the company? A. How do you spell it?

Q. H-i-b-e-t-t-s? A. No, I don't recall the name.

Trial Examiner Gates: We will take a recess for five minutes.

(Whereupon a short recess was taken.)

1545

After Recess

Trial Examiner Gates: Proceed.

Q. (By Mr. Ransom) Well, then, your stores account bureau, or division, in the auditor's office, kept, as you may say, stock and records about property that was

S. M. 510

moved in and moved out of active service? A. Yes, primarily however of stock that was out of service and in storage.

Q. That is the property that had been on the lines, like transformers, meters? A. Not meters.

Q. Not meters, but transformers? A. Transformers.

Q. What else? A. Transformers, appliances, net work switches, P. K. switches, et cetera.

Q. That had been installed in the lines and had been in service and then for one reason or another were taken off the line and out of active use? A. That, and new material that was purchased.

Q. That was a kind of plus and minus accounting be-
1547 tween property which, equipment of that sort which came in and went out on the lines and then that which came back or from the lines and then went out of service? A. That's right.

Q. And it related only to such property of the New York and Queens Company? A. That's right.

Q. Now, how old were you in November of 1935? A. 27.

S. M. 511

Q. And were you at that time unmarried? A. That's right.

1548 Mr. Ransom: That's all.

Redirect Examination:

Q. (By Mr. Moscovitz) You testified that you attributed the reinstatement of Mr. White to the I.B.E.W., is that right? A. No, I attribute his reinstatement to the aggressive and consistent activities carried on by the local union through its membership, particularly those in the Hudson Avenue generating station.

Q. In which you represented them in your regular capacity? A. That is right.

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Q. You don't suggest, do you, that the company was pleased by his reinstatement or your connection with it, do you? A. No, I don't.

Q. Have you done special jobs from time to time for the company?

Judge Ransom: For whom?

Mr. Moscovitz: For the company, outside of the company.

The Witness: Yes, well I was on the night force doing cut in and cut out work, I did do certain special work in connection with my job as the key man for that particular class of work.

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Q. (By Mr. Moscovitz) And what would the special jobs be? A. Oh, instructing all of the cut in and cut out men on how to work out the accounts, when new rates

were adopted, one particular job was, there were many tough cases that came through and this work, either they were old, or something was wrong with the reading, or the premises, it was impossible to get in and the account grew old and there was an overlap there, these special cases were not done by the average person, they were left for me.

1551

Q. Also, there was a mix up when the new rates came through once that three-fourths of the men figure them out the wrong way and the other fourth figured them out the right way with the head of the section ruling against those of us who had figured them rightly and I was given the job of going back over the work and changing the whole business and then the next job of going back over them and changing the whole thing again.

Things like that, any special job in connection with that work.

1552 Q. Were they jobs that other persons could have handled also? A. Some of the men could have handled them, I think so, yes.

Q. Were you singled out to do the work, is that it? A. Yes.

Q. Was that through 1934 and '35? A. No, that was earlier in the year than that, that was in 1932 while I was on the day, on day work, in 1935 I was the only one doing that type of work so there was nothing special in it.

1553 S. M. 513

Q. And you got to the point of your last period of employment, when you got to that point you were the only person handling that kind of a job, is that right? A. Yes.

Q. Would your leaving the job or being discharged indicate the breaking in of another person to fill your job? A. It would.

Judge Ransom: I object to that, the witness can't testify to that, I submit.

Trial Examiner Gates: The question has already been answered.

Judge Ransom: Move to strike it out.

1554 Trial Examiner Gates: He may answer it and the answer so far given may stand, if he actually knows.

Q. (By Mr. Moscovitz) Well, I understand your testimony to be that there were no other persons doing your work, is that right? A. That is correct. I know from personal knowledge that there was nobody else in my section in the stores accounting division who was familiar with this work and that to a large extent included the head of the division. The man who broke me in on it was one of two people that I know of who was familiar with the job, and the second person was a supervisory

official, so that when I left, the man who had broken me

S. M. 514

in on the job had already been laid off. He wasn't there to do it, so outside of the supervisory official, there was no one there—these two supervisory officials—there was no one there who knew the job, certainly no clerks.

Q. Who knew the job? A. There was my immediate supervisor, Mr. Locke, and then a man in the inventory department by the name of J. J. Daly, I think his initials were "J. J.", who was familiar with it, having done part 1556 of it when it was in fixed capital.

Q. Was your job a technical job in any respect? A. Not particularly. It required a knowledge and adaptability to accounting procedure, common sense, and a little application.

Q. Was it the sort of job that any person could fill very easily without a certain amount of experience and training?

Judge Ransom: Objected to as vague and worthless and not probative testimony.

Mr. Moscovitz: I will withdraw that.

1557

Q. (By Mr. Moscovitz) Was it necessary to go through a breaking in process in order to handle the work that you were handling?

Judge Ransom: Objected to on the same grounds.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

S. M. 515

Q. (By Mr. Moscovitz) You went through that process? A. Yes.

1558 *Martin A. Wersing—For N.L.R.B.—Redirect*

Q. Over what period of time were you being broken in to handle that job? A. Oh, I suppose about a week directly, and then for a period of several weeks I had to call upon the man who broke me in on it for advice and so forth, upon Mr. Daly to give me advice, my supervisor. That part was necessitated by reason of being transferred from one department to another and of the procedure and set up used being altered in some way.

Q. After that period of time had elapsed, was it ever necessary for you to call on your supervisor for assistance in the handling of your job? A. Yes, when un-

1559 usual situations came up, such as the purchase of used transformers from the New York Edison Company, what price to enter them in at; the sale of old transformers from New York and Queens, what to do with the salvage. Whenever any unusual transactions came through that would not be the everyday type, it was necessary to check up on it, to see that you were doing it right.

Q. After that period of time elapsed, were there ever any other persons who came to assist you or work with you or who were substituted for you? A. No. Mr. Locke, the head of the division was the only one who worked with me, and then only, outside of these special occasions,

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only when they decided to close the books and take an inventory of them.

Q. Were you ever, at any period of time, while you were doing that work, or away from the office for any other reasons, or were you ever ill? A. Not that I recall, I may have been out a day or two, but I don't recall when I was.

Q. You have no recollection of whether or not there was anyone else called in to do your job? A. Well, while I was on my vacation, I think Mr. Grulich took care of

the invoices that came through and did the absolute necessary work and let the rest of it accumulate until I got back. He did pricing and that was about all.

Q. No other person that you know? A. Not that I know of.

Q. That's all.

Examination by Trial Examiner:

Q. (By Trial Examiner Gates) You have referred several times to the Hudson Avenue plant. Is that operated by the Brooklyn Edison or by— A. Brooklyn Edison. 1562

Q. You worked only for the New York and Queens, did you not? A. That is correct.

Q. Which has since been consolidated, brought in with the consolidation?

S. M. 517

Judge Ransom: No.

A. No. The set up there—

Q. (By Trial Examiner Gates) That remained separate? A. Yes.

Q. Did the Queens Local take in employees of the Brooklyn Edison as well as— A. No, Brooklyn had its own local. The period that I have reference to in connection with the Hudson Avenue station is that period since the reorganization of the local and its entrance into the A.F.of L. At that time we did away with separate locals, reorganized everyone into one local, which had jurisdiction over the entire system, regardless of whether the employees were New York and Queens, New York Edison, Brooklyn Edison or what. 1563

Q. When you were connected with Local B-729— A. B-752.

Q. 752? A. Yes.

Q. Did the I.B.E.W. attempt to negotiate any contract with any of the respondent companies? A. They did not.

Q. Did you know whether any international officers attempted to negotiate contracts with the locals? A. For the locals?

Q. For the locals? A. They did not.

S. M. 518

Q. You stated that you signed some articles in a paper called the "Live Wire", in October or November issues,
1565 but you did not state the year, as I recall it. Can you state the year? A. Yes.

Q. What is it? A. 1935.

Q. I understood at the beginning of your testimony that you said that you were discharged on November 25. A. November 29.

Q. The 29th? A. Yes.

Q. That's all.

(Witness excused.)

Mr. Moscovitz: I will call Mr. Grulich.

Mr. Moscovitz: Mr. Examiner, Judge Ransom and
1566 myself are interested in finding out whether or not you would care for some further discussion regarding the amendment at this point before we proceed with this witness.

Trial Examiner Gates: I would like to have you state, Mr. Moscovitz, whether or not Board's exhibit No. 1 discloses that the I.B.E.W. was served with a copy of the complaint and the amended notice of hearing. My impression is that it does.

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Mr. Moscovitz: Mr. Examiner, you will notice in Board Exhibit No. 1 a certification of Mrs. Her-

rick is that the complaint in this proceeding was served upon the Consolidated Edison Company as well as the other companies as the exhibit will show, the United Electrical & Radio Workers and the International Brotherhood of Electrical Workers. If you refer to the photostatic copy which you find in the exhibit you will see that the Consolidated Edison Company of New York acknowledges receipt of the complaint at 4 Irving Place, and you will also find that the United Electrical & Radio Workers of America acknowledge 1568
receipt of May 12, 1937, signed by C. Levine, and then you will find above that on the same date the acknowledgment of service by the I.B.E.W. signed by D. Kaplan.

Now, before the I.B.E.W., there is the figure "3," and before the figure 3 there is some lettering which I cannot figure out. It might be "local," it might be something else. I am not sure, but in any event there is an indication of acknowledgment by the I.B.E.W. signed by Mr. Kaplan, and then further on in the exhibit you will find that the amended notice of hearing which gave the adjourned date for the proceeding was served upon 1569
the International Brotherhood of Electrical Workers, as well as the other persons and parties in the complaint.

Mr. Judge Ransom: I don't know what the address is of the International Brotherhood of Elec-

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trical Workers or any of the authorized agents of that organization other than such addresses as have been given in this proceeding with respect to certain of the local unions which have been recog-

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nized by the respondent companies as collective bargaining agencies for such of their employees as belong to those unions.

I notice, however, that this purported service on the International Brotherhood of Electrical Workers is at 103 East 25th St., which is not an address which I personally am able to recognize as having any relationship to this organization.

So far as any of the local unions are involved in this proceeding are concerned. As far as I

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know, that may or may not be, that address of some local of the I.B.E.W., it may be, but not of any local which has been covered by testimony here. However, I do not personally regard the question of service of the notice of hearings of any moment. My point is that you can not maintain a valid proceeding against an employer and a collective bargaining agency in behalf of various of its employees under Section 8, sub-division 2 of the Act and hear and determine a section 8-2 charge and complaint without citing the labor organization complained of as a party to the proceeding.

I believe that the labor organization has been

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cited in here as a party to 9-2 proceedings in other

S. M. 521

cases, that is, I believe it has been cited in other cases and I think it is necessary here to a valid proceeding. I do not think that this purported service on the I.B.E.W. at 130, or, something, in the East 25th St., even if it were a valid service, which I do not know, and therefore do not concede—

Trial Examiner Gates: Do you recall the names of any of these cases before the Board?

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Judge Ransom: I do not at the moment, I probably could get them for you if necessary. Mr. Moscovitz probably knows them, but I do not think that this service, even if it were a good service of notice, would make this a valid proceeding on a Section 8 subdivision 2 charge and complaint, without the naming of the labor organization attacked and complained of as a party defendant.

Mr. Moscovitz: Well, all I say in this case is, so that there will be no confusion first, that there has been, as evidently appears in the face of Board 1574
Exhibit No. 1, service. In the second place, there is no question here of placing the responsibility for the proceeding on the shoulders of the I.B.E.W. That should be made very clear, because the Board takes the position that the International Brotherhood of Electrical Workers is a bona fide labor organization within the meaning of our statute, and we are not here in this proceeding attacking the legality of the I.B.E.W. All we do here—

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Trial Examiner Gates: Do you know of any 1575
cases, Mr. Moscovitz, in which the Board has held that? Under which it may be decided under Section 8-2, that that is a necessary or a proper party?

Mr. Moscovitz: That a union is a necessary or proper party?

Trial Examiner Gates: Yes.

Mr. Moscovitz: I do not know of any such cases.

Trial Examiner Gates: Yes.

Mr. Moscovitz: I know of no such cases, all I want to point out in this proceeding, Mr. Examiner, is this, that we ask for no more than an

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order which directs the Consolidated Edison System to stop doing the things which the complaint alleges, that the Consolidated Edison System is doing in violation of 8-2, so that there should not be any question about the I.B.E.W., if we get an order directing the system to stop contributing to the I.B.E.W., or to stop controlling the I.B.E.W.

Trial Examiner Gates: I don't think it is necessary to go into it any further. The motion to amend the complaint, to amend paragraph 23

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of the complaint by changing the figure 16 to 21, in the second line to 17 and 22, is granted; a similar motion as to paragraph 24, to change the figures 16 and 21 to 17 and 22, is granted.

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Judge Ransom: I respectfully except, and in behalf of the respondents reserving our objections to jurisdiction, we ask that this proceeding be now terminated because of a fatal defect of the parties.

Trial Examiner Gates: The motion is denied.

Judge Ransom: Exception.

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(Discussion off the record.)

Trial Examiner Gates: Proceed.

J. GRULICH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) What is your name, Mr. Grulich? A. Julius A. Grulich.

Q. Your address? A. 143-17—38th Avenue, Flushing, Long Island.

Q. By whom are you employed at the present time? A. By the Federal Writers Project.

Q. New York City? A. New York City, 231 East 42nd St.

Q. In what capacity? A. I am a senior newspaper man.

Q. How long have you been employed by the Federal Writers Project? A. Since the beginning of March, 1936.

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S. M. 524

Q. Have you been employed continuously since March, 1936? A. Yes.

Q. What has your income been as a result of that work? A. I started on the project as a junior newspaper man at $21.57. That scale continued until July, I believe, at which point I was reclassified to a senior newspaper man at $23.88.

Q. When were you reclassified at that rate? A. July.

Q. July, 1936? A. Yes, sir.

Q. And have you continued at that rate since? A. Yes.

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Q. By whom were you employed before your association with the Federal Writers Project? A. My previous employment was with the New York & Queens Electric Light & Power Company.

Q. How did you work for the New York & Queens? How long did you work there? A. A little better than six years.

Q. Starting when? A. October 3, 1929.

Q. What was the first job you held with the company? A. I was employed as a clerk, an accounting clerk, a position that I held for the duration of my service there.

S. M. 525

Q. What was the amount of money you were making when you were first employed? A. I was employed at $25. a week.

Q. Is that what you made at the time your employment was terminated? A. No, sir.

Q. Did you receive increases during the period of time you were with the company? A. Yes.

Q. Always employed by the same company? A. Yes.

Q. Did your responsibility change with the years of
1583 employment with the company? A. Yes.

Q. How long did you work before you got your first change of rate? A. Approximately six or seven months.

Q. What was your increase? A. $2.00.

Q. Did that carry with it an increase in responsibility of work? A. No, I do not believe it did, except that I perhaps became more efficient in dispensing my duties by that time.

Q. How long did you work after that until you got another increase? A. Well, after that, the company put

S. M. 526

1584 through a reduction in salaries, a general wage reduction.

Q. When was that? A. It seems to me in 1932 I suffered an 8⅓ wage cut at that time, bringing my wages down to $24.86, or something like that.

Q. You are sure it was 1932? A. I am not certain what year, 1932 or '33.

Judge Ransom: 1933, in connection with the reduction in hours.

Q. (By Mr. Moscovitz) How long did you work under that reduced scale? A. Until May, 1934, at which time one-half of that wage cut was restored.

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Q. That was a voluntary restoration, wasn't it, by the company? A. I would say that the company was prompted to restore that because of the agitation on the part of the union to restore the wage cut.

Q. Had there been agitation—

Judge Ransom: I move to strike out the answer as wholly incompetent. This clerk cannot testify as to what prompted the company to do what it announced at the time and signed the President's re-employment Agreement?

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Trial Examiner Gates: I will ask the witness

S. M. 527

to answer the question. The reporter may read the question to the witness.

Mr. Moscovitz: The question is whether or not the restoration was voluntary on the part of the company.

A. It was voluntary, as far as "voluntary" goes.

Q. (By Mr. Moscovitz) Had there been any agitation for restoration of the reduction in pay by any labor organization before that? A. Reduction in pay?

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Q. Restoration in pay? A. Yes.

Q. When did that agitation start, as far as you know? A. The union objected to—let's see—

Judge Ransom: I move to strike out the answer as wholly unresponsive. I ask that the witness be asked to answer questions rather than to argue his case.

Mr. Moscovitz: I don't think the witness has finished his answer.

Judge Ransom: He hasn't started it.

1588 *J. Grulich—For N.L.R.B.—Direct*

Mr. Moscovitz: Then you cannot strike his answer.

Judge Ransom: He has started to answer something else, as he does on every question.

Q. (By Mr. Moscovitz) When did the agitation start, if you know? A. The agitation for the restoration began early in 1934.

S. M. 528

1589 Q. And by whom was this agitation commenced? A. By whom was the agitation commenced?

Q. Yes. Was it by a labor organization? A. By a labor organization.

Q. By what labor organization? A. The Brotherhood of Utility Employees.

Q. Were you a member of the Brotherhood of Utility Employees at that time? A. Yes, I was.

Q. In what capacity? A. I was a rank and file member.

Q. You mean a regular member of it? A. Yes.

Q. How long had you been a regular member of the
1590 Utility Employees Workers at that time? A. I joined the organization in January, 1934.

Q. Were you a charter member of the organization? A. No, sir.

Q. Were you one of the organizers of the local within your company? A. Yes.

Q. Did you work with Mr. Wersing and others in an attempt to organize the local of that organization in your company? A. Yes.

Q. Had you held an office, after this agitation or restoration of wage cuts? A. No, not prior.

S. M. 529

Q. All right. Now, when you say there was agitation of the date which you have already given, will you tell us what the form of the agitation was?

Judge Ransom: Objected as immaterial, not within any issue tendered by the complaint as amended.

Trial Examiner Gates: He may answer.

A. The agitation was in the form of newspaper publicity on the ability of the company to restore the wage cut, and 1592
it was also in the form of a distribution of leaflets that were prepared by the Brotherhood of Utility Employees.

Q. And, and who was in, who was in charge of the preparation of those leaflets? A. I myself have prepared many of them.

Q. And did you yourself sign many of them?. A. I never signed any of the leaflets.

Q. What was the name of the publication that your organization issued? A. We issued the "Live Wire".

Q. How often would it be issued? A. Once a month.

Q. When did it commence, the issuance of this publication? A. I believe it was in October. 1593

Q. 1934? A. 1935, the publication.

S. M. 530

Q. Well, the publication known as the "Live Wire", is that right? A. Yes.

Q. Now, these leaflets to which you refer, these publications to which you refer, which were issued in 1934 did they also appear under the name of the "Live Wire"? A. No, they were individual leaflets issued and sponsored and issued by the organization.

Q. It was not then in the form of a magazine or a newspaper, just regular circulars, is that it? A. The

organization, the Brotherhood of Utility Employees, the National organization, did have a publication that it issued and which was distributed, but I myself was not, did not contribute to that.

Q. The National organization publication, was it being issued at that time also? A. Yes, sir.

Q. What was the name of it? A. Tower Man.

Q. And was that issued monthly? A. Yes.

Q. Were you at all responsible for the distribution of that monthly publication? A. No.

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S. M. 531

Q. Was it distributed only to members of your organization? A. Yes.

Q. And to regular subscribers? A. Yes.

Q. Was it distributed to persons as they left the plant as a part of your organizational program? A. Not that particular pamphlet or bulletin.

Q. All right, so then these other leaflets to which you refer, which contained statements in support of your effort to secure restoration were issued locally by your own organization, is that it? A. That's correct.

1596 Q. And that was in 1934, the date to which you have already referred, is that right? A. That's right.

Q. And did your name appear on those leaflets? A. No, it did not.

Q. Did the names of any of your officers appear on those leaflets? A. Whether it was prior—

Q. At that time? A. Well, I really don't recall.

Q. I see, did the name of your labor organization appear on that leaflet or on those leaflets? A. Yes, it did.

S M. 532

Q. Were there references from time to time in those leaflets to Mr. Wersing or yourself or other members of your organization? A. Yes, there were.

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Q. Were they after that period in March, 1934, or during that period? A. In the majority, as far as I recall, they were all after.

Q. Now, what was the substance of the statements in the leaflets in March, 1934, which requested a restoration of the pay cut?

Judge Ransom: I object to that as incompetent, not a proper method of proof.

Trial Examiner Gates: Read the question, please, Mr. Reporter.

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(Reporter repeated the last question.)

Trial Examiner Gates: You may answer.

The Witness: The leaflet, the general tenor of the leaflet, was to point out the capability of the company to restore the wage cut and as a means of forcing, as a means of compelling, the company to restore this wage cut and pointed out that a labor organization was necessary, and of course the restoration of a cut was merely a grievance. We were building a labor organization and we tried to point out by building this labor organization we could adjust these grievances.

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S. M. 533

The larger the organization became, the more speedy it would be, the more speedy would the grievances be adjusted.

Q. How soon after the appearance of these leaflets was there a restoration? A. The restoration came in May, 1934.

Q. And at that time, at the time of the restoration, you still were not an officer of the local, were you? A. In May, 1934?

Q. Yes. A. I don't recall whether I was elected to the executive board before that time or not. I know I

was very active in organizational work, I don't recall just what capacity at the moment.

Q. You don't recall whether or not it was in an official capacity or as a member? A. Yes.

Q. After you received this restoration of the 50 per cent of your cut, you continued in your regular employment, did you not? A. That is right.

Q. And were there any other increases after that? A. Yes, the company instituted a system of reclassification.

Q. When was that system instituted? A. I would say
1601 it was just a few months after the restoration in May, 1934, and somehow or other I still, to this day, could not

ascertain how they figured it, but at that time I was boosted to $27. a week. It was sort of a mysterious method of calculating at that time, that they instituted.

Q. Well, was that on the half pay restoration? A. No, the 50 per cent pay restoration went into effect in May, 1934.

Q. That brought your salary up to what? A. $25.86, in the neighborhood of $26.

1602 Q. And how soon after that did you receive the other increase as a result of this reclassification which you say you did not understand? A. I really don't recall the exact month, but it was perhaps three or four months after, I really don't know.

Q. Was it in 1934 or 1935? A. I believe it was 1934.

Q. And did you continue then at this rate of pay for any length of time, or did you receive another increase shortly thereafter? A. I did receive another increase thereafter.

Q. Do you recall when it was? A. No, I don't recall, to be frank about it.

Q. If you have any notes which will refresh your recollection? A. No, I don't have any notes on that at all, I know I was boosted some time afterwards to $28.75.

S. M. 535

Q. And was that the same that you received at the time you were discharged? A. That's right.

Q. You mentioned before that there was some change in responsibility of your work during the period of your employment; did you assume additional duties? A. Yes, I assumed additional duties as the scope of my work 1604
broadened, as I become more experienced, of course I assumed I was given more work to do.

Q. And will you describe some of these additional duties that you assumed, or that you were asked to assume? A. Yes, I handled some correspondence that I took upon myself, or I was given the work.

Q. Now, when you say that you answered some correspondence, when, in relation to the time when you first went to work for the company, did you start answering correspondence? A. Well, I don't know, it's pretty difficult to pin it down right to the exact time, or date, I could not say definitely, it was two or three years per- 1605
haps after I was there.

Q. Well, did it become after two or three years after you were there, a regular part of your work? A. Yes.

Q. And what was the nature of this correspondence that you were handling? A. Well, it was in connection, it was in connection with return of empty cable reels and

S. M. 536

perhaps an adjustment of the proper amount of credit received, or there might be a question arise as to the value of the reel returned, or of the reel that was dam-

aged, there might have been a little correspondence necessary to adjust the particular value of the reel.

Q. Were you doing that work also at the time you were discharged? A. Yes.

Q. Now, were you doing it on the basis of certain references to you for answer by a superior, would these letters be referred to you for answer by some superior? A. Yes.

Q. Who was the superior? A. Harold J. Bocke.

Q. Is that the same Mr. Locke that Mr. Wersing testi-
1607 fied about? A. Yes.

Q. You heard his testimony? A. Yes.

Q. And were there other persons in your department who also had letters referred to them similar to yours for answer, or were you the exclusive person for reference to matters of that sort? A. In connection, in that account, in the adjustment of the account, in connection

with reels, yes, I handled virtually all the correspondence.

Q. And did your handling of that correspondence necessitate some special study on your part, or special
1608 training? A. Well, you would have to be articulate, I mean, to write a letter, I mean to dictate a letter.

Q. Well, did it also necessitate some special training so that you might become well advised of the subject matter that you were writing about? A. Yes.

Judge Ransom: I object to that as incompetent and not in proper form, not appropriate, it just calls for a conclusion.

Trial Examiner Gates: He may answer, if he states the particulars.

The Witness: Yes, it requires some training, any one just could not come in there and start writing a letter, you would have to first of all

know the English language properly and then would have to know something about the accounts and the circumstances and the movement of the reels and so on and so forth, yes, I would say some training was required.

Q. Did that become a regular part of your job? A. Yes.

Q. In addition to that, what were these other responsibilities that you assumed with the passage of time? A.

S. M. 538 1610

I worked in the stores account division and we kept there perpetual records of the income of stock as it was charged out to the store rooms. The cost price was fixed to the requisition, the unit cost price and it was my duty to calculate and establish all unit cost prices of these items in stock. In other words, I received all the invoices covering all the materials coming into stock, and I calculated for the cost of new material, the quantity, that was left in stock, the price that the previous material was received, and I arrived at an average price.

Q. And to whom would you submit your result? A. My work was checked by a supervisor. 1611

Q. Who is that? A. Walter Brown.

Q. And that is a different supervisor, is that right? A. That's a different supervisor, well, he is clerk in charge.

Q. Above Mr. Locke? A. No.

Q. Mr. Locke is above him. A. Yes, sir.

Q. I see, and then it would go from this gentleman to Mr. Locke, is that right? A. No, after that the invoices, after the proper notation had been made of the

S. M. 539

new price that had been established, after this had been

noted on the stock record, the invoices of course were properly classified as to the account to which they would be charged, incidentally, I did that, too, and then they were sent over to the accounts payable department.

Q. I see, and did that become a regular part of your work, too? A. Yes, it did.

Q. You were doing that as well as this letter writing at the time you were discharged? A. Yes, that's right.

Q. And how many persons were there in your department? A. Approximately—you mean, the division?

1613 Q. In your division? A. Yes, about twenty-nine.

Q. And did you work in the same division that Mr. Wersing worked in? A. Yes.

Q. How many persons—what was your division called again? A. Stores Accounts Division.

Q. How many persons were there in your department? A. In the entire department—oh, 95 perhaps.

Q. What was the department called? A. The auditors' department.

S. M. 540

Q. And there were other divisions in addition to your own in that department, is that right? A. Correct.

1614 Q. What were some of the other divisions? A. Work Order Division, Fixed Capital Accounts Division. Those were the chief ones.

Q. Did you work interchangeably between divisions, or always in your own division? A. No, I worked in the same division from the time I started.

Q. I see. And when you say you worked in the same division from the time you started, you mean you were never transferred to other departments? A. No.

S. M. 541

Q. All right, what other duties did you assume or were yor asked to assume during the period of time that

you were employed, at the time you were last employed? A. Well, I was given responsibility of, in a way, it was supervising the stock records which the people in the department kept. I was more or less instructed to constantly look over the records to see whether the posting was satisfactory and also to check calculations and oft times Mr. Locke delegated me to carry out certain instructions of his, and when Mr. Brown, the clerk in charge, went on his vacation, I assumed all of his duties in addition to those that were mine.

Q. Yes. A. And— 1616

Q. This work, in the nature of supervisory work that you testified about, were you instructed to do that work by Mr. Locke? A. Yes.

Q. How many people were there that you were to check on? A. Oh, about, I would say, twelve girls, twelve or fifteen.

Q. When were you asked to carry on that work, do you recall? A. I don't recall.

Q. Do you recall when, approximately, in relation to the date when you were last employed by the company? A. I would say around 1933, some time.

Q. And does that also go for the other work that you 1617

S. M. 542

have been testifying about? A. As to when I assumed that work?

Q. Yes, as to when you assumed it? A. I think it was a little earlier in respect to some of the duties.

Q. But did you carry on with all those duties through your entire period of your employment? A. Yes, virtually the entire period of employment with the exception of the first year or two.

Q. What other duties were assumed by you or were you asked to assume in addition to those which you have

1618 already described? A. That is all I can recall that was compulsory. I was asked to become a bureau correspondent for the house organ.

Q. But that was extra curricular activity? A. That wasn't compulsory. I could have declined.

Q. Is that the company publication? A. Yes, the house organ.

Q. Who gets that out? A. The company.

Q. Who asked you to do that? A. My chief, Mr. Locke.

1619 Q. When was that? A. Some time in 1933, very likely. I don't recall exactly.

Q. What is your best recollection? A. 1933.

S. M. 543

Q. The first part, last part? A. Last part.

Q. Yes. And what did you do, did you turn it down? A. No, I took it on myself to do.

Q. You did? A. Yes.

Q. How long did you carry on with that work? A. Oh, perhaps a year and a half.

Q. Until the time of your discharge? A. Well, I had

1620 given it up perhaps six months before.

Q. Someone else carry it on after you gave it up? A. Yes.

Q. Who was that, do you recall? A. I believe it was Mr. Wagner who did it for awhile.

Q. Is that the Mr. Wagner who is also named in this complaint? A. Yes.

Q. Now were there any other extra curricular activities which you assumed at the request of the company? A. I cannot recall any.

Q. All right. In addition to your regular duties and your regular line of work, were you asked at any time

to perform certain special missions for the company, or were you given special assignments? A. Special assignments pertaining to the work in the bureau perhaps, yes.

S. M. 544

Q. And what would those special assignments be? A. Well, they weren't of much consequence.

Q. They weren't? What would you then call a special assignment? A. Well, if another department wanted a certain group of filing—figures pertaining perhaps to materials and their costs, then Mr. Locke would call on 1622
me to draw up a schedule of the materials that were involved and I would do that.

Q. Would he always call on you for that work? A. Invariably in connection with the stock.

Q. Yes. Now, were there any other persons in your division who did the same work that you were doing, the same work that you have already testified about? A. Supervisory, Mr. Walter Brown.

Q. Any one else? A. No. He is the only one.

Q. You testified that you were the only person who handled these letters and correspondence, is that right? A. That's right. 1623

Q. Now, does the same hold true for the other duties which you assumed about which you have already testified? A. I don't quite get the meaning of your question.

Q. Well, was there any other person, or were there any other persons in your division who did the same kind

S. M. 545

of work that you were doing? A. No, my work was specialized and I was the only person in the bureau doing it.

Q. Was there any period of time during the years which you worked for the company that you were away

on vacation or because of sickness? A. I have never taken any extended leave of absence because of illness and several summers I believe I took an extra week's vacation.

Q. Who would do your work while you were on vacation? A. Mr. Brown.

Q. That is, your supervisor? A. Yes.

Q. But there was no other person in your division who would do it, is that right? A. No.

Q. And do you recall whether or not during the years
1625 you were employed by the company you were called in by your supervisor? And disciplined for inefficiency in the performance of your work? A. No, I have never been disciplined for that.

Q. Have you ever been commended by Mr. Locke or other supervisors for the work you were doing? A. Yes, often.

Q. Do you recall when it was that was the last time

you received such commendation in relation to the date of your discharge? A. Yes. At the time that the re-
1626 classification went through, I recall that I thought I deserved re-classification at that time. I took the matter up with my supervisor Mr. Locke and he concurred with my thought that I had been in the department and I had been a good, efficient worker, and he thought I deserved more money or a higher classification, which would bring me more money.

Q. Any other special—I am sorry, did I interrupt you? A. Then, I understand, from that point on, he did try to get a re-classification for me.

Q. Is that what he told you? A. That is what I was informed.

Q. Yes. And that was not very long before the last day that you were employed by the company, is that right? A. It is in the summer of 1935.

Q. Yes, and—

Judge Ransom: If Your Honor please, how long are you planning to sit?

Mr. Moscovitz: I would like to say it has been a long day and very hot, and I do not hesitate to join in the request of Judge Ransom for adjournment. 1628

Trial Examiner Gates: Do you want to begin at 9:30 in the morning?

Judge Ransom: I submit that I must have a

S. M. 547

little time for myself, Mr. Examiner. You do not save any time, if I might say, by having a half past nine to after five schedule, because you simply slow everybody up who is working at the counsel's table, so that the proceedings do not move. 1629

Trial Examiner Gates: Well, we will recess until ten o'clock tomorrow morning.

(Thereupon at 5:05 P. M., a recess was taken until 10:00 A. M., June 15th, 1937.)

ADJOURNMENT

1630 S. M. 548

Minutes of Hearing, Held June 15, 1937

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER

of

CONSOLIDATED EDISON COMPANY OF NEW
1631 YORK, INC., and its affiliated companies,
BROOKLYN EDISON COMPANY, INC.,
NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY,
WESTCHESTER LIGHTING COMPANY,
THE YONKERS ELECTRIC LIGHT AND POWER COMPANY,
NEW YORK STEAM CORPORATION,
CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY,
Respondents,

and

1632 UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.

Case No. II-C 224

14 Vesey Street,
New York City, N. Y.,
June 15, 1937.

The above-entitled matter came on for hearing pursuant to adjournment taken June 14, 1937, at 10:00 o'clock A. M.

Before:

ROBERT M. GATES, Trial Examiner.

1633

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National

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Labor Relations Board.

WILL MASLOW, Esq., Attorney for the National Labor Relations Board.

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for 1634
United Electrical and Radio Workers, Local 1212.

Messrs. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall St., New York City (By William L. Ransom, Jacob H. Goetz and Pincus M. Berkson, of counsel), appearing specially for the respondent companies, reserving all objections to jurisdiction.

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PROCEEDINGS

Trial Examiner Gates: The hearing will come to order, please. 1635

J. A. GRULICH, resumed the stand.

Direct Examination (Continued):

Q. (By Mr. Moscovitz) You were testifying at the close of yesterday's proceeding, Mr. Grulich, about your employment activity; do you recall whether or not in the years that you were employed by the company you at any time were laid off or discharged? A. You mean before the final dismissal?

Q. That is right. A. You mean a suspension, perhaps?

Q. Either a lay-off or a suspension or discharge? A. No, I have never suffered such a ruling.

Q. So that in November, 1935, when you were discharged, that was the first time that there was a break in the continuity of your employment, is that right? A. No, I take that back, I believe I was late once, they had a ruling in the company at one time that if you were late twice in one week you get a day off, I believe I was late twice in one week one time there and I got a day off.

Q. How long ago was that? A. Oh, I have no idea,
1637 perhaps '33 or '34.

Q. Was that the only time? A. That was the only

S. M. 551

time I recall.

Q. Had you ever been called in and criticized by your supervisor regarding your work? A. No, I have never been criticized for my work. In fact, I have always been commended on the efficient dispatch of it, and I have often been called into conference with the bureau chief on different problems confronting the bureau.

Q. Is that Mr. Locke? A. Yes.

1638 Q. And were you called in from time to time right from November, 1935? A. Yes.

Q. Was there any notice for you that in November, 1935, you were to be discharged? A. There was no notice until approximately half an hour before I received my discharge notice.

Q. Yes. And what date was that? A. November 30, on Friday.

Q. Yes. Are you sure it was the 30th or the 29th? A. It was the last few days of the work week, the last day in November. It may have been the 29th.

Q. The same day Mr. Wersing was discharged? A. That is correct.

1639

Q. Now, you have already testified that you were one of the organizers of the local of the Independent Brotherhood of Utility Employees? A. That is correct.

S. M. 552

Q. You have not told us whether or not at any time you had office in that organization? A. With the founding of the local I was a charter member and was elected to the Executive Board. That was in April or May of 1934. In the first annual election of the local, in February, 1935, I was elected to the vice-presidency.

1640

Q. And before being elected to the vice-presidency, had you continued, as testified yesterday by you, being active in your local work? A. Yes, I was intensely active.

Q. And did that action take the form other than the distribution of leaflets? A. Yes, it did.

Q. Tell us something about the kind of activity which you were engaged in up to the time that you became vice-president? A. I assisted and prepared leaflets for distribution.

Q. Yes. A. I handled the publicity in connection with the local in its organizational work and its criticism of some of the company's policies. I presided at open meetings of the local in the absence of Mr. Wersing, who was on night duty at that time, and, of course, I visited people in their homes, endeavoring to solicit their membership in the organization.

1641

S. M. 553

Q. Did you have any discussion during that period of time with any of your foremen or supervisory employees about your labor organization? A. Yes, I had discussions with the auditor, I had discussions with various officials, Mr. Locke, Mr. George A. Housenbower, the

1642 present auditor of the Queens Company, but in the main, I might qualify it; these discussions were of a friendly nature and sometimes these officials perhaps stated their sympathies, and then again they perhaps criticized certain tactics, it was more or less of a friendly discussion, I really was not on the carpet for this, for my activities, at least I didn't think so.

Q. Yes, now, during that same period of time up to the time you became vice-president, were you a member of the employees' representation association? A. Yes, I
1643 was a member of that organization.

Q. When did you become a member of it? A. At its institution in the Queens Light Company, I believe, it went into effect in May 1, 1934.

Q. Were you an officer of it? A. No.

Q. You simply held membership, is that right? A. I simply held membership and participated in certain activities.

S. M. 554

Q. Yes, did you participate in those activities after you became a member of the Brotherhood of Utility Em-
1644 ployees? A. Yes.

Q. Did you continue being as active as you had been before you joined the Utility Employees? A. You mean as active in the Independent Union?

Q. No, did you continue being active in the employee representation association after you became a member of the Utility Employees? A. Yes, I participated in its various functions and elections and electioneering, and any other activities that a regular member would participate in.

Judge Ransom: He was a member of the Brotherhood, he testified, before the employees set up their electoral system.

1645

Q. (By Mr. Moscovitz) Well, weren't the two organizations organized at about the same time? A. No, I joined the Independent Union in January.

Q. What year? A. 1934.

Q. Yes. A. And I recall being very active in exposing the company union as the tool, an instrument of the management, in forestalling and denying genuine organization to the employees. I recall distributing a lot of literature on it, and I recall explaining to my fellow

S. M. 555

1646

workers in my department the difference between an independent organization and one that was sponsored by the company. Of course, when the company union came along and there was no stopping it, I really got into it and thought that I should work, in that way, I thought that I could work within the organization, the frame of it in exposing its futility, and for that reason I participated in it.

Q. Well, was the employee representation association then in existence? A. No, it went into existence officially May 1, 1934.

Q. After your organization was started, is that right? A. The local was not established, understand, Queens Local 103 was not established at the time the company union was voted upon, and at the time it went into effect the local was established shortly thereafter, if I recall correctly, but previous to its institution——

1647

Q. Previous to what institution? A. The company union's institution.

Judge Ransom: I object to this constant attempt to create prejudice by calling this a company union. And I would seriously contend that it was. I move to strike out the characterization.

Trial Examiner Gates: Did the organization have a name?

The Witness: Yes, but it was commonly referred to as the company union by everybody.

S. M. 556

Trial Examiner Gates: What was its name?

The Witness: Employees representation plan.

Trial Examiner Gates: Suppose you refer to it that way.

1649 Judge Ransom: Is the motion to strike granted?

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) Yes? A. As I said before, Queens Local 103 was established just shortly after the institution of the employees representation plan, but previous to its institution, we had a nuclei of members in the Independent Union, the Brotherhood of Utility Employees, who functioned out of the national offices in New York City, but we had our meetings in Queens. We did not have sufficient members at the time to apply for a charter, but we really functioned as an organization.

1650 Q. And the employee representation plan continued, did it not, up to the time you became vice-president of your organization? A. Yes.

Q. And isn't it a fact that some of the members of the Utility Employees were also members of the employees representation plan? A. Yes.

Q. Do you recall whether or not the employee representation plan was in existence when you were last em-

S. M. 557

ployed by the company? A. Yes, it was.

Q. And were you still a member of it? A. Yes.

1651

Q. And it was through them, too, wasn't it, that members of your labor organization, Utility Employees, continued in their membership in the employee representation plan? Is that right? A. Yes, the majority of them did.

Q. After you became vice-president of your organization, did you assume any responsibilities as an officer which brought you in contact with representatives of management? A. Yes, I did.

Q. What were they? A. I participated with Mr. Wersing in conference with Mr. H. L. Snyder, the then 1652
president of the Queens Company, regarding a questionable point in a reclassification that Mr. Wersing had requested.

Q. When was that, do you recall? A. Either March or April, I believe.

Q. 1935? A. 1935.

Judge Ransom: Will you bring out whether that was Mr. Wersing's request for his own classification from second grade to first grade clerk?

S. M. 558

1653

Q. (By Mr. Moscovitz) Did you hear Mr. Wersing testify on that point? A. Yes, I did.

Q. Do you recall how this reclassification question came up? A. Yes, Mr. Wersing had made application for a particular job, and it seems Mr. Wersing did not get a response to his application. Mr. Wersing at the time was under the impression that due to his organization affiliations, he was being discriminated against.

Judge Ransom: I move to strike out the witness's argument as wholly incompetent. It is enough to have Mr. Wersing speculate while he

1654

is on the stand, but this witness cannot certainly speculate as to what was in Mr. Wersing's mind.

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) Was this the first reclassification request of Mr. Wersing's that you became familiar with? A. Yes, that is the first one. I believe he spoke of two of them yesterday.

Q. That's right. And this is the first? A. That's right.

1655 Q. You testified that you heard his testimony yesterday on that point? A. That is right.

S. M. 559

Q. Do you have anything further to add to the testimony that he gave on this reclassification question? A. No, I think he covered the question quite thoroughly yesterday, I really don't see anything I could add to it.

Q. Do you recall whether or not at any time before March or April, 1935, when this first reclassification question came up, you had brought to the attention of management in any form or way the fact that you were an officer of the Utility Employees? A. Yes, I dispatched

1656 a letter to Mr. George A. Housenbower, the auditor, informing him of the fact that I had been elected to the vice-presidency of the local.

Q. Do you recall when it was that you sent that letter? A. It was either February or March, 1935.

Q. Did you receive a reply from him? A. No, I did not, because I did not ask for one, but I received a verbal acknowledgment from him, I saw him a day or so later in his office.

Q. On business? A. Yes.

Q. Anything to do with your labor organization? A. No.

Q. And what acknowledgment did he make? A. Well, he spoke of the fact that I was in the organization and active in it, he expressed the hope that my work would not interfere, my work in the Independent Union,

S. M. 560

would not interfere with the discharge of my regular duties with the company.

Q. Had he or any other supervisory employee ever complained to you about your organizational activities 1658
interfering with your regular work? A. No, I have never received any complaint on that score.

Q. Can you tell me whether or not the first request for reclassification about which you have already testified was the first contact you had with management after you became vice-president of your organization in your official capacity? A. Yes, that was the first time.

Q. All right, was there any contact with management after that time? A. In an official capacity?

Q. Yes. A. As a representative of the Brotherhood?

Q. That's right. A. Yes.

Q. When? A. That was in November, 1935.

Q. What date? A. Oh, I would say around November 1659
10th, perhaps November 15th, perhaps somewhere in there.

S. M. 561

Q. Yes, what happened? A. We went in to see the management in respect to the discharge of one James Mannix, who had been a member of our organization.

Q. When you say "we", who do you refer to? A. The committee that had been established by the local to investigate the circumstances concerning Mr. Mannix's discharge. That committee included Jack Schulter, Mr. Wersing and myself.

1660

Judge Ransom: I object and move to strike out all the testimony about the question of the discharge of Mannix, on the ground that in the first place it is not within any issue tendered by the complaint; in the second place, the government is bound by the testimony of this witness yesterday in which he, in behalf of the government, repudiated the idea that Mannix's discharge had anything to do with labor matters.

1661 Mr. Moscovitz: I don't intend to prove by these witnesses, Mr. Examiner, that Mannix was improperly discharged, nor do I intend to go into that question, I only elicit this line of testimony so that I can show the kind of activity that these gentlemen were engaged in during this period of time which immediately preceded their discharge, which I think is within the allegations of the complaint.

Trial Examiner Gates: The motion to strike is denied.

S. M. 562

1662 Judge Ransom: Exception.

The Witness: We had gotten Mr. Mannix's story somewhat sketchily concerning his discharge and not having a full report, why, rather than go on half-cocked, we decided to go in to see the management to get their side of the story.

Mr. Mannix was known as a union man. In fact, he was prominently known as a brotherhood man. He was featured in a radio speech in behalf of the Brotherhood, in which he criticised the union and its utility as an agency for collective bargaining, and for that reason——

Judge Ransom: I move to strike out the whole

1663

answer, wholly outside of the issues here and grossly improper, not probative, not involved in the case.

Mr. Moscovitz: I do object to it being stricken, Mr. Examiner, because I think it quite proper that the Board have before it the reasons why this company considered it important to take certain organizational questions up with management. I don't for a moment suggest that the facts which surround, which make up the background for their going in to make their request, that is, nor do I 1664
suggest that this testimony establishes it, but I think it quite proper to be in the record so that the Board may see what motivated these people in their presenting their side of the case, or attempting to investigate both sides of the case.

S. M. 563

Judge Ransom: I submit it tenders an issue to which— Please repeat the last question and answer.

(Reporter repeated the last question and answer.) 1665

Judge Ransom: I submit it tenders an issue of which respondents had no notice, and as to which the previous witness in behalf of the government has repudiated that the matter had anything to do with labor matters.

Trial Examiner Gates: The answer may stand.

Judge Ransom: Exception.

A. Mannix's discharge——

Trial Examiner Gates: Just a moment. I believe the question has been answered as put to the witness.

1666

Q. (By Mr. Moscovitz) You went with Mr. Wersing and these other gentlemen to see whom? A. Mr. H. C. Dean.

Q. Yes. And Mr. Dean was acting at that time in what capacity? A. Vice-president.

Q. Of the company? A. Yes, the Queens Company, yes.

Q. And did you spend much time with Mr. Dean? A. Perhaps 15 minutes.

Q. And who was the spokesman for your committee?

1667

Judge Ransom: Your Honor understands I have an objection to all this testimony on the Man-

S. M. 564

nix matter.

Trial Examiner Gates: It may be understood that your objection applies to the whole line.

A. Mr. Wersing was the spokesman, but we both participated.

Q. (By Mr. Moscovitz) When you say you both participated, you mean yourself and Mr. Wersing? A. Yes,

1668

Mr. Wersing presented the purpose of our meeting with Mr. Dean, stating that we were official delegation of the organization, and in the course of the conference, why, I also asked several questions of Mr. Dean.

Q. Yes. And did the other members of the committee speak also? A. No, Mr. Mannix had been invited to participate in the conference, but he failed to make his appearance. However, Mr. Waterhouse, personnel manager of the Queens Company, was present at the conference.

Q. And did he also participate in the discussion? A. No, he was merely an observer.

Q. What were the questions that you asked, if you recall? A. I do not recall the questions particularly that I asked.

Q. Do you recall whether or not you secured any information from management at that meeting which could be used as a basis of determination of the question which you had before you? A. Yes, Mr. Dean finally informed us that Mr. Mannix had been discharged for the good of

S. M. 565

the service, and he also informed us that, I believe it 1670
was his immediate supervisor, who was also discharged, and a still higher official that was demoted.

Q. Who were those two persons?

Judge Ransom: Objected to as wholly immaterial and outside any issues here.

A. I really don't recall.

S. M. 566

Trial Examiner Gates: Just a moment. There was an objection interposed.

The Witness: I am sorry. 1671

Trial Examiner Gates: Objection sustained.

A. I don't recall their names.

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) Did he explain to you what he meant by being dismissed for the good of the service?

Judge Ransom: Objected to as immaterial and not within any issue here.

Trial Examiner Gates: He may answer.

A. No, he did not tell us any—he did not give us any specific information, but he intimated that Mr. Man-

nix had been involved in irregularities in which he violated the company rules. He did not go into detail, however.

Q. What was the nature of the intimation? A. He did not broach on that, whatsoever.

Q. Well, after you left did you make a report of your meeting to your membership? A. Yes.

Q. Was that the last step that you gentlemen took in behalf of Mr. Mannix? A. Yes, and I may add that the report for the membership was published in one of
1673 the papers concerning the disposition of the case insofar as the union was concerned.

S. M. 567

Q. You mean a regular daily newspaper? A. No, it was our regular official bulletin.

Q. What was its name? A. The "Live Wire".

Q. About when did that appear? A. It was distributed about November 25.

Q. 1935? A. That is correct.

Q. And was your name or were the names of the members of the committee printed? A. I do not recall,
1674 but I could check.

Q. Will you check? A. Sure.

(Witness consults records.)

A. No, the names of the committee are not given.

S. M. 568

Q. Are the names of any members of the committee given? A. No, sir.

Q. Does your name appear on the "Live Wire" in any respect? A. Yes, sir, signed articles.

Q. Now, did you sign them—how did you sign them? A. J. A. Grulich, and also several pseudonyms.

Q. I see, and you have just been referring to the publication of the "Live Wire" of what date? A. December, 1935.

Q. So that it was published after your conference, and after your discharge? A. No, the paper appeared just a few days before our discharge.

Q. I see, and was it distributed a few days before your discharge? A. That's correct.

Q. And is that a paper which is distributed by hand? A. Yes, it is distributed, it was distributed by the Brotherhood men at various points in the Queens Com- 1676
pany.

Q. At points of ingress and egress? A. Yes.

Q. Persons going in and out of the plant? A. That's right, and offices.

Q. And offices? A. Right.

S. M. 569

Q. Did you at any time after your conference with Mr. Dean, but before your discharge, have any other conference with a representative of management? A. Yes, I did, with Mr. Locke, my chief.

Q. When was that in relation to the date of your 1677
discharge? A. That was just about ten days, I would say, before my discharge.

Q. Did you speak with him alone? A. Yes, I did.

Q. Well, tell us about it? A. The conference with Mr. Locke concerned a distribution of literature that I had made at a meeting that was sponsored by a political organization that was supposed to be in effect among employees of the New York and Queens Electric Light and Power Company. This meeting was held around the middle of November in the auditorium of the public school in Jackson Heights. The literature, the content of the leaflet distributed, denounced the purpose of the

1678 *J. A. Grulich—For N.L.R.B.—Direct*

meeting. I believe it concerned the Mayor's stand in advocating a municipal yardstick light plant and the leaflet criticized company union representatives who composed this committee in charge of affairs, instead of working for the interests of the employees——

Judge Ransom: I move to strike out the answer as not within any issue in this case, purely argumentative, self-serving.

S. M. 570

1679 Trial Examiner Gates: It may stand.

Judge Ransom: I move to strike out the persistent characterization of company union. If the witness wishes to make his argument, he ought not to do it under oath and on the stand.

Trial Examiner Gates: The testimony that is in may stand, but I will again ask in referring to the employees organization that you refer to it by its name.

Mr. Moscovitz: Can't we have an understanding that the two words are to be used interchangeably "plan" and "company union" without any

1680 connotation or characterization?

Judge Ransom: I think it is better—you can make any argument that you want, of course, but I think the witness is supposed at least to stick somewhat to facts.

Mr. Moscovitz: The witness has already been instructed to use the word, hasn't he?

Trial Examiner Gates: Yes.

Q. (By Mr. Moscovitz) Will you continue then your statement that you were making? A. Yes, the leaflet criticized the various employees representation officials that sponsored the meeting.

1681

It pointed out that such a meeting was not in the interest of the employees, that the E. R. P. represented us instead of interesting themselves in politics or should represent us instead of interesting themselves in politics and the Mayor's yardstick light plan, et cetera, that they

S. M. 571.

should devote their time and efforts to fight the layoffs that were then threatening.

Just before the meeting started, I was out in front of the school distributing these circulars, and just before the meeting started I went upstairs to see the extent of the crowd that was in the auditorium and I was standing in the back, in the entrance of the auditorium, and I, of course, had the leaflets with me and some of the individuals in the back row, seeing me and the leaflets, motioned for me to come in to give them a few leaflets, which I did not see any harm in doing.

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I did that and no sooner than I got in to give these people the leaflets when others down further towards the front of the auditorium wanted them also, so I walked down the aisle and I gave everyone leaflets, and on the way out, why, I was confronted by two representatives of the employee representation plan and I was threatened with violence.

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Q. Who were they?

Judge Ransom: I move to strike out the answer as completely and wholly outside any issues here, drawn in simply for an obvious purpose of argument.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Who were these two representatives? A. Their names I do not know, but I know

S. M. 572

them to have been general council members, having seen them at the general council meetings which I attended as an alternate and I know that they were general council representatives. The man asked me, "What are you doing in this meeting, what are you trying to do? Do you want to get something that you don't like?" Or words to that effect. And I said, "Well, what's the matter", I said, "There is no harm in this, this is a democratic
1685 meeting, isn't it? I am a member of this organization just as well as you are. If I express an opposite point of view that is my privilege." Then they conducted me out in the back of the hall and finally out.

Q. Now, was that the question or the subject of the meeting that you were discussing with Mr. Locke? A. Yes.

Q. Did he call you in to discuss this matter? A. I happened to be working right next to him and we somehow or other got talking about it and he did not think it was very ethical of me to make this distribution in the hall, he happened to be there.

Q. What did he say about it? A. He said he did not
1686 think it was just the thing to do.

Judge Ransom: I object to that as immaterial and outside of any issues here.

Trial Examiner Gates: The objection is overruled.

S. M. 573

A. He said he didn't think that was just the thing to do. I don't believe he really criticized me, but he was more or less admonishing me.

Q. (By Mr. Moscovitz) Did you have any conversation after that with a supervisory employee before your

discharge about your organizational activities? A. None that I recall.

Q. Do you recall that before this there was a layoff of 25 men, or 25 persons? A. Correct.

Q. Do you recall how many days or weeks before your discharge? A. The layoff that I know of occurred in August at which time it included our secretary, Alfred Wrench.

Q. But there were no persons in your division who were affected by that layoff? A. No.

Q. Was it the first layoff that you knew of since you 1688
had been with the company that was general in nature? A. No, I had known of another one specifically.

Q. Was that before that one? A. Yes.

Q. Do you recall how long before that one? A. Do you mind if I check?

Q. Go right ahead. A. Yes, the previous one occurred approximately in October, 1934.

S. M. 574

Q. What was the number involved in that layoff, do you recall? A. Approximately 50 men.

Q. Did that layoff affect your division? A. No, sir. 1689

Q. Now, will you tell us what happened on the day of your discharge? A. I received my regular weekly salary in the form of a check in the morning, with no intimation whatsoever of the discharge which ensued in the afternoon.

In the afternoon, at approximately four o'clock, I was summoned to my chief's desk.

Q. Is that Mr. Locke? A. Correct.

Trial Examiner Gates: How is that name spelled?

The Witness: L-o-c-k.

1690

A. And he excitedly told me that Mr. Payne of the personnel department wanted myself and Mr. Wersing to report to him immediately.

Q. (By Mr. Moscovitz) Did he indicate to you what Mr. Payne wanted you for? A. No. I recall distinctly asking him, "Well, what's up?" And he said he didn't know.

Q. Now, before you and Mr. Wersing went up, do you know whether or not any other persons in your division had been laid off or discharged? A. No, I did not.

1691

S. M. 575

Q. Had anybody been laid off or discharged before you went up? A. Just before we went in?

Q. Yes. A. I didn't know any.

Q. Or at any time before you went up? A. I didn't know of anyone until I got over to the personnel department.

Q. And who was the other person that you learned of when you got up there? A. Mr. Michael A. Wagner, the Local's treasurer, and one Clem Verrone.

Q. Just the four of you? A. That is all I knew of.

1692

Q. All from the same division? A. No.

Q. I am talking now only about your division? A. Oh, I see.

Q. Had any other persons in your division been laid off or discharged at any time before you and Mr. Wersing went up to see Mr. Payne? A. No.

Q. All right, after Mr. Lock told you that you were to go up and see Mr. Payne, did you have any other discussion with him? A. With Mr. Lock?

S. M. 576

Q. Yes. A. No.

Q. Did you go right up? A. Yes.

Q. Then what took place? A, How is that?

Q. Then what took place? A. Well, we were told to wait in the ante room of the personnel office, a sort of reception room.

Q. Yes. A. Mr. Wersing went in first. While sitting there, waiting for our turn to go in to see Mr. Payne, we noticed Mr. Wagner coming out of the office through another exit. And Mr. Wersing then went in and after a few minutes he came out and I went in.

Mr. Payne started off by saying, "Well, I have some 1694
very bad news for you."

So I said, "Spill it," because I know him quite well.

And he says, "We are laying you off. The management is discontinuing a certain department and to find jobs for the married men from that department, they are laying off single men and you have been chosen as one of the single men to go."

S. M. 577

Q. What was the department that was being discontinued? Did he tell you? A. I don't believe he told me, 1695
I don't recall it anyway.

Q. Did he point out to you from what departments or divisions single men were being laid off to make place for the married men? A. No, he did not point it out. However, I knew that Mr. Wersing had just been in and Mr. Wagner and I was there.

Q. What did you say to him about it? A. I says, "Well, why pick on me? There are plenty other people with less seniority than myself."

Q. Were you referring to your division? A. Well, I was referring not only to my own division but to the entire company.

1696 Q. Yes. A. He said, "Well, I don't know anything about that." He said, "I am merely carrying out orders."

Q. Did he tell you whose orders he was carrying out? A. No, he did not.

Q. Did you have anything further to say to him at that time? A. No, I don't believe I said much more.

Q. Did he make any further reference to your seniority statement? A. No, he did not, he did not seem to be inclined whatever to discuss the matter, except to
1697 hand me my two weeks pay, and due notice, and get my

S. M. 578

signature on the severance.

Q. Were there any persons in your division at that time who had less seniority than you? A. Yes.

Q. How many? A. In my department?

Q. Take your division, for instance. A. In my division there were at least ten or twelve people.

Q. In your division? A. Right.

Q. Were those ten or twelve people single or married? A. Some were single, some were married.

1698 Q. Were there any persons in your department, outside of the persons within your division, who had less seniority than you? A. Yes, there were quite a few, at the time of President Roosevelt's reemployment——

Q. Agreement? A. Agreement, yes, the company at that time took on a number of men in that particular department. I had seniority not only over those men, therefore, but men that were hired even prior to the President's reemployment agreement.

Q. And do you recall about how many in number? A. Well, it is difficult to estimate, but I would say at least 20 or 25 or 30 percent.

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Q. What kind of work were these persons doing in your division over whom you had more seniority? A.

S. M. 579

Well, some of them did stock posting on stock records and some of them worked on the accounting procedure of material stock requisitions, the work that they did involved different phases in the division.

Q. Yes. Was the work—was it work which your experience qualified you to handle? A. Yes.

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Judge Ransom: I object to that as incompetent and self-serving.

Trial Examiner Gates: Overruled. I think it would be well to explain whether or not he had ever done it before.

Mr. Moscovitz: What was your answer to that?

A. I could do it, I could do all that.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Was it work that you had ever done? A. Yes, I had done that work.

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Q. Was it work that you had done prior to the assumption of your new additional responsibilities, or was it work that you were doing right along? A Well, it was work that I had been doing off and on almost right to the time of my discharge because at times if there was someone ill and there was not anyone else at hand to carry on the particular records, why I often took it on if I had leisure.

S. M. 580

Q. And the work which was done by the persons with less seniority in other divisions which composed your

department, was that work of a similar nature? A. It was to a degree, I did not think any of that work required a great deal of past experience or training, in fact, every worker had a certain proportion to do and a certain limited amount prescribed, a certain prescribed routine, and when you once acquired the routine which was easy enough to acquire, you could dispatch the work quite easily.

In fact, I was asked by Mr. Charles Monica, the accountant of the work order bureau, I was asked on
1703 a number of occasions prior to my discharge to come over and to accept a position in his department. He evidently felt that I could do the work.

Q. How long prior to the date of discharge was that? A. Well, I have been asked a number of times by him whether I would like to work in his department.

Q. Do you recall when you were last asked in relation to the date of your discharge? A. Perhaps in the spring of 1935 and at the time shortly after the reclassification went into effect. I believe that was in May or June of 1934.

Q. Now, let's see, Mr. Wersing was discharged on
1704 that day? A. Well——

S. M. 581

Q. He was president of your local? A. No, he was general manager of the local.

Q. General manager? A. Yes.

Q. What was your office? A. I was acting president.

Q. Now, was Mr. Wagner discharged that day? A. Yes, sir, he was.

Q. Did he hold an office with the union? A. Yes, sir, he was treasurer of the local.

Q. Any other officer discharged that day? A. No, sir.

1705

Q. Well, did that leave you with any officers? A. None, with the exception of the executive board.

Q. So that you were without officership in so far as working within the plant was concerned, is that it? A. Right.

Q. Did you have a secretary? A. Mr. Wrench performed the duties of the secretary.

Q. He had already been discharged, is that right? A. Right.

Q. Now, did you take any steps—I withdraw that, please. Did you receive any additional payment at the time of your discharge? A. Two weeks in lieu of notice.

1706

S. M. 582

Q. And have you received income other than that about which you have already testified as to a writer for the Federal Writer's Project since the date of your discharge? A. None.

Q. Now, what was the exact amount that you were making on the day that you were last employed? A. At the Queens Company?

Q. Yes. A. $28.75.

Q. Did you, by yourself, or through your organization committee take any steps after your discharge to secure reinstatement with the company? A. Yes, sir.

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Q. Was that through your own efforts or through the efforts of your committee? A. Through the efforts of the committee.

Q. And was that done as testified to yesterday by Mr. Wersing? A. That is right.

Q. And meetings with Mayor LaGuardia? A. Yes.

Q. Mr. Largay and Mr. Portenell? A. Yes, sir. Also with the committee going direct to Mr. Dean.

Q. You heard Mr. Wersing's testimony regarding those efforts? A. No, I was out of the hearing room at the time.

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Q. Did you go yourself to see Mr. Dean after your discharge? A. No, sir.

S. M. 583

Q. Did you go yourself to any of these meetings to which I have referred, such as the meeting with Mayor LaGuardia, Mr. Portenell, Mr. Largay of the State Department of Labor? A. Yes, I was in conference with Mr. Largay and Mr. Portenell, or at least I was present,
1709 and I was also present when the committee went down to see Mayor LaGuardia.

Q. And none of those conferences resulted in the submission of the question for some peaceful disposition. Is that right? A. That's right.

Q. No machinery was set up for the adjudication of your discharge? A. It was suggested, but it did not come about,

Q. By whom was it suggested? A. Mayor LaGuardia.

Judge Ransom: I object to that as immaterial.

Trial Examiner Gates: Objection is overruled.

1710 Mr. Ransom: Exception.

Q. (By Mr. Moscovitz) Now, can you tell me whether or not there was a strike vote effective during the period of time that these negotiations were going on? A. If I recall correctly the emergency committee was vested to call a strike and the negotiations or attempts to settle the dispute amicably proceeded after the emergency committee had been vested with the power to call strikes.

S. M. 584

Q. Now, these negotiations having failed, and the strike not having taken place, did you take any further

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steps to secure your reinstatement or was the matter—A. No, but I attempted to secure the severance allowance.

Q. I am just talking now about your attempt to secure your reinstatement? A. No.

Q. And the matter was then filed with the Labor Board so that the question is now before us, is that right? A. That's correct.

Q. Now, are you desirous of going back to work for the company? A. Yes.

1712

Mr. Moscovitz: That's all.

Trial Examiner Gates: We will recess for a few minutes.

(Whereupon a short recess was taken.)

AFTER RECESS.

Trial Examiner Gates: Proceed.

CROSS EXAMINATION:

Q. (By Mr. Ransom) Mr. Grulich, at the time of your discharge you were unmarried? A. Yes, sir. 1713

Q. What was your age? A. 31.

Q. And all of your work for the company had in one capacity or another related to the stores accounts? A.

Division.

Q. What? A. Stores accounts division.

Q. Yes, and you spoke about a reduction in your salary, that was a reduction made generally in the company at the time the President's reemployment agreement was signed? A. The reduction was made May 1st, 1933.

to Local 103, the names of the officers elected were published.

Q. That is, they were published and circulated among the employees in literature which was distributed? A. Correct.

S. M. 591

Q. And had there been no formal officers until early in 1935? A. There were acting officers.

1727 Q. And had those persons, those acting officers, yourself among them, from time to time gotten out leaflet publicity of the sort that you refer to? A. That's correct.

Q. And had also had a newspaper published? A. It was really from that point on that the organization got out publicity, hitherto the publicity was issued from the New York office of the Brotherhood, it was really at the time that we began to function as a union, from the time that we were chartered as a union that we issued our own publicity and our own literature.

Q. And up to that time it had been done from the New York office? A. That's right.

1728 Q. But through what you call these acting officers of your group? A. No, the New York office had at that time its duly elected officers.

Q. But didn't you and Mr. Wersing have anything to do with the publicity before the actual chartering of your local? A. The distribution of it.

Q. And not with the preparation? A. No.

S. M. 592

Q. By the way, when did you first become acquainted with Mr. Wersing? A. Oh, I met Mr. Wersing perhaps in February, 19—February or March, 1934.

Q. Can you state definitely the date of your letter

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to the auditor of the company saying that you had been elected the vice president of the Local Union? A. I don't know the date but it is on file here.

Judge Ransom: Can you give the date?

Mr. Moscovitz: February 24, 1935, a letter to Mr. Hausenbauer.

Q. (By Judge Ransom) You stated in answer to a question by Mr. Moscovitz, at least you made reference to the efforts which you made after the termination of your employment to obtain what the company calls a 1730
separation allowance for yourself under the provisional retirement plan for employees? A. I didn't make any statement to Mr. Moscovitz.

Q. Well, you referred to your efforts, I think. Did you make such an effort? A. Yes.

Q. And did that effort take the form of a suit in court? A. Later in the proceedings it did, yes.

Q. That is, you and Mr. Wersing and Mr. Wagner? A. After trying normal means of obtaining it.

Q. That is, you first brought the matter to the atten-

S. M. 593

1731

tion of the company by correspondence? A. Mr. L. A. Coleman, executive vice president, I believe.

Q. And later you consulted counsel and brought suit. Is that correct? A. That is correct.

Q. And that suit was brought by you and Mr. Wersing and Mr. Wagner? A. Correct.

Q. Can you fix the approximate time when you brought that suit? A. The case was scheduled for trial since May, 1935—1936, rather.

Q. So that presumably it was brought some time in the spring or summer of 1936? A. A very peculiar thing

—it didn't come up until late fall that year, or early in the fall rather, after the summer session.

Q. Well, it was started that spring? A. Yes.

Q. Who was your attorney in that suit? A. Mr. Charles Bellous.

Q. And Mr. Wersing stated, as I understood it, that in some division of labor between you, that you more or less took charge of that suit, as far as— A. Well, it was understood that I should take the responsibility.

1733 S. M. 594

Q. And was Mr. Bellous an attorney selected by you or by the others? A. By mutual consent.

Q. What? A. By mutual consent.

Q. And did you place before him the facts as to your discharge and the basis of your claim? You did that, didn't you? A. Yes.

Q. And you did that some time in the spring of 1936? A. Yes.

Q. And he brought suit and conducted the case before the Municipal Court in the first instance, and then before the Appellate Term, and then finally made application
1734 to the Appellate Division. Is that correct? A. Yes, that was the procedure, I believe, that was followed.

Q. Yes. And the result in all courts was adverse to your claim? A. Yes.

Q. And you had made a full and frank disclosure to Mr. Bellous of the circumstances of your discharge, hadn't you? A. Absolutely.

Q. And you worked with him or consulted with him regarding the papers in the case; didn't you? A. Yes.

S. M. 595

Mr. Moscovitz: Mr. Examiner, I do not like to interrupt Judge Ransom, but I do object if this

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line of questioning goes to an endeavor to establish that there had been an adjudication elsewhere of the question of whether or not this particular witness has been discharged for union membership and activities, in violation of the National Labor Relations Act.

Judge Ransom: I am not at the moment addressing myself to that phase of the matter.

Mr. Moscovitz: Then I cannot quite see that this cross examination comes at all within the direct testimony that has been elicited.

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Judge Ransom: I think that will——

Trial Examiner Gates: Well, I will suggest that there must be limitation here. I think that is not particularly pertinent.

Judge Ransom: I think Your Honor will see that it is pertinent very quickly. May the question be read back to the witness?

(Question read.)

Q. (By Judge Ransom) Were you familiar with briefs which he had filed in your behalf in the court in support of your action?

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Mr. Moscovitz: Mr. Examiner, I must—well, I will withdraw that.

S. M. 596

Q. (By Mr. Ransom) Were you? A. I have read it.

Q. I read to you this statement from the brief.

Mr. Moscovitz: Now, Mr. Examiner——

Judge Ransom: I want to ask him whether it is an accurate statement. I shall, I trust, pursue the proper course after that.

Mr. Moscovitz: Mr. Examiner, I do not know

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quite about the propriety of Judge Ransom reading into the record some statement that some lawyer put into a brief.

Judge Ransom: I propose to show Your Honor that months afterwards these men, through their lawyer, represented to the courts of the State of New York that they were not discharged for any such reason that they now venture to suggest, and they went through three courts on that basis.

Mr. Moscovitz: They had no basis for this

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kind of relief in state courts. There is nothing unusual about going into various courts on different pleadings.

Judge Ransom: I presume plaintiffs are not entitled to shift their ground.

Trial Examiner Gates: The question may be finished.

Q. (By Judge Ransom) I will read you the following statement from what will, if necessary, be proved to be the brief filed by Mr. Charles Bellous on your behalf in the case entitled "Municipal Court of the City of New York, Borough of Queens, First Division: J. A.

1740

S. M. 597

Grulich, Michael A. Wagner and Martin A. Wersing, plaintiffs, against New York and Queens Electric Light and Power Company, Inc., a domestic corporation, defendant."

After referring to the adoption of the retirement plan for posting on the bulletin board, I quote: "Several months thereafter plaintiffs herein were discharged by the defendant for no other reason than that they had to make adjustments in the department looking toward further economies."

1741

I ask you whether that statement was made in pursuance of the information which you, in the spring of 1936, gave to your attorney, Mr. Bellous? A. In fact, to qualify my answer——

Q. Well, is it or isn't it? A. Yes, but later on——

Q. Answer yes or no. A. Later on the same brief also points out the labor activities that we were engaged in to get, to file, suit and to base the claim we were merely quoting the reasons that the company gave, the company says, that they were firing us for economy reasons and after all that is not our reason, that is a 1742
company reason.

Q. Well, if you desire— A. That is what the company told us.

Q. We will put the brief in evidence. A. Well, I

S. M. 598

said——

Q. But I ask you if that was a true and correct statement in pursuance of the information which you gave to Mr. Bellous? A. That is the position we took in an effort to get the money, otherwise we would not have gotten, or we did not get it anyway. 1743

Q. Well, you didn't get it, did you? A. No, sir.

Q. You referred to the letting out of employees in the summer of 1935 and referred to the number as 25? A. Yes, I approximated it at 25, I really don't know.

Q. You mean you don't undertake to say that the number at that time was not around 100, do you? A. I have no idea.

Q. And you did not mean to give to this Examiner and the Board that the number was no more than 25 or any similar sum? A. To the best of my knowledge the figure was around 25 or 30.

Q. Well, how many men do you say were let out on

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that same day that you were, what was the total number? A. I know of three besides myself.

Q. That's all that you know about? A. I learned later, I was told, second information, I overheard it, there were six altogether, five including myself.

Judge Ransom: That's all.

S. M. 599

Mr. Moscovitz: That's all.

1745 Trial Examiner Gates: I have one or two questions.

Examination by Trial Examiner:

Q. (By Trial Examiner Gates) I am not sure that you stated when you went to see Mr. Dean relative to Mr. Mannix? A. In November, 1935.

Q. Can you place the date any more closely than that? A. A report was made to the local on November 21st, let's see, the conference with Mr. Dean must have taken place perhaps a week before that.

Q. Around the 14th? A. Yes, I would say around

1746 there.

Q. I have not attempted to compute it accurately, but your annual rate, was it more on the writer's project than at the other work? A. No, sir. When I first started with the writer's project my weekly rate there was $21.57, it actually was higher if you figure it on an hourly basis because that was only for a four-day week, six hours a day. It actually, if you figure the number of hours, it would come to a higher salary than with the Queens Company and in July, 1936——

Q. You were— A. Increased.

Q. $21.57 is the weekly rate? And $23.86 was also a weekly rate? A. That began in July, yes, sir.

S. M. 600

Q. I thought you were referring to $100.00 on the basis of the annual rate? A. No.

Trial Examiner Gates: That is all.
Mr. Moscovitz: That is all.

(Witness excused.)

Mr. Moscovitz: I will call Mr. Kennedy.

1748

WILLIAM J. KENNEDY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) What is your name? A. Wm. J. Kennedy.

Q. Where do you live? A. 14-19 111th Street, College Point, Long Island. 1749

Q. By whom are you employed at the present time? A. By the C.I.O. in the utility division.

Q. In what capacity? A. Organizer.

Q. How long have you been so employed? A. I was first employed as an organizer by the United Electrical and Radio Workers.

Q. When was that? A. The latter part of March, 1937, when Mr. John L. Lewis made a general drive

S. M. 601

throughout the utility industry and throughout the en-

1750 tire United States, I was taken on as a full time organizer by the C.I.O. itself.

Q. And that is the work you are presently engaged in? A. Yes, sir.

Q. Were you employed elsewhere before you went to work for the U.R.E.W. as an organizer? A. I had attempted to go in business after being discharged by the company.

Q. When was that? A. August of 1936.

Q. Did you go in business? A. Yes, sir.

1751 Q. When did you go in business? A. In August of 1936.

Q. And how long did you continue in business? A. Well, if it could be called a business, it was a failure practically from the beginning.

Q. How long were you engaged in that failure? A. Up until the time, the former 752 Local of the I.B.E.W. became disaffiliated with the I.B.E.W. and became affiliated with the C.I.O.

Q. Do you recall the date? A. I believe it was April 19th.

Q. April 19th? A. 1937.

1752 S. M. 602

Q. 1937? A. Yes, sir.

Q. Now, during that period of time when you were engaged in business for yourself, do I understand your testimony to be that you made no money but lost money? A. I would say I lost money, yes, sir.

Q. Since then have you been working on a regular salary? A. At the time I was taken on by the United Electrical Radio Workers affiliated with C.I.O., I received a salary of $25.00 a week as a local organizer.

Q. Yes. How long did you work at that salary? A. Approximately six weeks, something like that.

Q. And then was your salary increased? A. Yes, sir.

Q. What is it now? A. $40.00 per week.

Q. Was that your increase from $25.00 to $40.00? A. Yes, sir.

Q. And you are still making that amount, is that so? A. Yes, sir.

Q. Is that the only income that you have had since you were discharged from the company? A. Yes, sir.

Q. When were you discharged? A. June 19, 1936.

1754

S. M. 603

Q. From what company? A. New York and Queens Electric Light and Power Company.

Q. Is this the same company Mr. Wersing and Mr. Grulich were employed in? A. Yes, sir.

Q. How long have you worked for that company? A. Eight years and six months.

Q. Were there changes in the type of work which you did during those years? A. Very much so, yes, sir.

Q. What were you first employed to do? A. In January the 18th, 1928, I was reemployed by the company, I had worked for them previous to that time. 1755

Q. When did you first work for the company? A. Shortly after I was discharged from the United States Army, after seven years of service, in 1922 or '23, I believe it was.

Q. How long did you work for the company then? A. About two or two and a half years.

Q. Doing what kind of work? A. I was first employed as a meter tester.

Q. Yes. A. I received an increase after I was transferred from that job to what is called a printo meter inspector; upon asking for an increase I was told that

Q. Yes, and was it in connection with a shortening of the hours of labor and a general cutting of the hours of labor in your department and others? A. At that time the company instituted a 35 hour week, it had been the 38 hour week.

Q. In your department? A. In the entire company.

Q. In the clerical? A. Yes, in the office.

Q. In the clerical accounting offices? A. Right.

Q. And that was the time or about the time the company announced it had signed the President's reemployment agreement and cut hours in pursuance of that?

1715 A. Yes, I believe it was more or less in conformance with that.

Q. And that reduced your pay at the time to $24.75 from $27.00? A. Yes.

S. M. 586

Q. Then it was restored to $27.00? A. Yes.

Q. And then at the time of the restoration of part of the original decreases, your pay was made $28.75? A. Correct.

Q. And that was of what date? A. I believe it was

1716 May 1st, 1934.

Q. Or as of the end of April, 1934? A. Yes.

Q. Your work in the stores account related to records of property which came in and out of active use? A. Yes, that was part of my work, yes.

Q. For example, new material of certain kinds, when received, went into stores? A. Right.

Q. That related only to equipment of certain kinds which became part of the fixed capital of the property? A. Usually used in connection with construction work?

Q. And from time to time units of this equipment which were out on the district were for one reason or

1717

another retired from active use and brought in either for repair or scrap? A. Salvage.

Q. Salvage? A. Yes.

Q. And your work related to the keeping of the fixed capital records relative to the movement of such equip-

S. M. 587

ment in and out of service? A. Yes, and calculating the prices at which it was received.

Q. Equipment which had been received before it was installed, unit prices for its installation, had to be determined in your bureau? A. Yes. 1718

Q. And then that property, when it went out into the district, went into the unit prices which had been determined in your bureau? A. Correct.

Q. Likewise, when a piece of that equipment for any reason went out of use and came back for storage account, you had to ascertain the unit prices at which it had been placed in the district in use, and take into account the amount of salvage as well as the cost of any dismantling. Is that correct? A. Yes.

Q. And consequently, it went out of the cost of service at the ascertained original cost, less, or with, salvage 1719 and dismantling given effect? A. Yes.

Q. And that substantially indicates the nature of the work that went on in your bureau and the classes of property to which it related?

S. M. 588

Q. That was in the main the nature of the work that went on in your bureau and the classes of property to which it related? A. That was in the main my duties there, yes.

Q. Yes. You spoke about your activities early in

1934 after you joined the Independent Brotherhood, with respect to newspaper publicity, and with respect to leaflets? A. Yes.

Q. Now, the newspaper publicity consisted in or included the preparation of statements which were given out to the newspapers about various matters pertaining to your organization, did they not? A. Yes.

Q. And those statements were given out from time to time in your name or in the name of Mr. Wersing and possibly others? Is that correct? A. Usually in the name
1721 of the organization.

Q. But didn't those statements often quote Mr. Wersing or yourself? A. Yes.

Q. As saying this or that with respect to some pending matter? A. That is correct.

Q. And that started early in 1934? A. Right.

Mr. Moscovitz: May I interrupt a moment, Judge?

S. M. 589

Judge Ransom: Yes.

1722 Mr. Moscovitz: It was not my recollection that it was early in 1934.

The Witness: I said shortly after I joined the union, I became intensely active, I joined the union in January, 1934.

Q. (By Judge Ransom) You have always had this flare for publicity and newspaper writing? A. I think it is a very valuable thing.

Q. I should think it would be. A. Yes.

Mr. Moscovitz: The only question I was interested in is whether or not the statement was that this publicity was issued then under his name?

Judge Ransom: He so testified under direct and he so testified again on cross examination.

Mr. Moscovitz: That was not my recollection.

Judge Ransom: Up to this moment, I assume it to be true.

Q. (By Mr. Ransom) Now, likewise these leaflets which you said you started getting out, some of those leaflets, with this occasional magazine, and others, were strictly what you would call leaflets, were they not? A. At that time they were leaflets, chiefly concerning the 1724
company union which was about to be presented.

Q. Perhaps you might obey the Examiner's instruc-

S. M. 590

tions. A. Excuse me, the employees representation plan.

Q. And they were leaflets regarding that and regarding other matters which were of interest to the officers and members of your organization? A. And the employees in general.

Q. And which you believed to be of interest to the employees? A. Yes.

Q. Those leaflets and the magazine, as you call it, 1725
when it later appeared, they contained articles by yourself which you signed, or some of them which you signed? A. Not at that time.

Q. When did you start signing articles in the magazine? A. Well, the "Live Wire" was published, the first issue of the "Live Wire" was published in October, I believe my name appeared in there as the author of one of the articles.

Q. (By Mr. Moscovitz) What year was that?

Q. (By Mr. Ransom) Which year was that? A. 1935.

Q. Yes. A. However, early—earlier in 1935, following the election of the officers in February, the officers

1768

there are special men because each time there is trouble, generally the same men were called out.

Q. How many first grade linemen were there in your particular outfit? A. Flushing district, or the whole overhead bureau?

Q. The Flushing district? A. Around 40 or 50.

Q. How many districts were there in your bureau? A. There were originally three. This is going back a few years. The Flushing District, Elmhurst District and Jamaica District.

1769

S. M. 611

Q. How many districts were there at the time you were discharged? A. Two.

Q. What were they? A. They had combined the Flushing district with the Elmhurst, which left Elmhurst and Jamaica, that was in 1935, early in 1935.

Q. Was a lay-off incident to that combination? A. No.

Q. Just made it one district, is that all? A. Yes.

Q. How many men were employed throughout the bureau at the time of your discharge? A. The only way
1770 I can judge it is by the number of representatives we had in the company union.

Q. All right.

Judge Ransom: I move to strike out the characterization, of "company union."

Q. (By Mr. Moscovitz) Whenever there is any reference to what you have been calling the company union, I would like you to use the words "employee representation plan," or just "plan."

The Witness: Mr. Examiner, we had called that by that title for three years and it is difficult

now at the last moment to call it by any other title, but I will try.

S. M. 612

A. There were approximately 350 men. There was one representative for each 50 employees in the overhead bureau, fractions are not counted, so we had six representatives in the face of that 300, and there were very close to 50 more.

Q. What was the geographical area covered by your bureau? A. Well, after they consolidated or merged, the two bureaus, Flushing and Elmhurst, we were going practically everywhere in Queens County. 1772

Q. How many men outside of yourself, in your division, were called out from time to time to do trouble shooting work? A. It depended on the location and the amount of the trouble.

Q. Who was the first man generally called, do you know? A. Well, that would be hard to say, I was always among the first to get into the plant. There were times when the supervisor would send a man up when the company tried to get me from the house. Ordinarily they would call up, and if you didn't answer the phone, then they would send a man up in the company car. At times the district supervisor came himself in his own car to bring me in when there was trouble in Queens on the overhead lines. 1773

Q. And did that happen from time to time right up until the time you were discharged? A. Yes, it was within one month, one month previous to the date of my discharge we were called out on a Sunday night at

S. M. 613

ten o'clock, a man was sent to the house with a company car.

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Q. Who was the man? A. A man named Martin.

Q. Who is he? A. Who I believe is a heater installer in the Elmhurst district of the overhead bureau. He stated that we had to get him right away, that it wasn't an overhead job at all, it was an underground job, there was a bad burn-out in Long Island City and I was one of the first men to be called from the house, as I said, this car was sent, I was called out, I had been doing cable work also.

Q. When you went out there, how many other men
1775 were engaged in the work? A. With this company car I was one of the first to get on the job, there were approximately 20, I should say, before the job was finished the next morning.

Q. And was that overtime work? A. We were paid straight time for it.

Q. Were you sent, outside of these trouble shooting jobs, on any special assignments for the company in the overhead bureau? A. I believe it could be called a special assignment, some years ago there was a big job came through, supposed to be handled originally, I believe, by the meter test department, especially the meter

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S. M. 614

department. There was a change over to single and two-element meters, to what is called a three-element meter. They were quite a large affair. There were very few of my men had any experience with them. I was one of the men selected by the bureau supervisor, Mr. Fallon, to take charge of the group who were going out changing over these meters all over the system.

Q. When was that? A. I believe that was 1934.

Q. 1934? A. The latter part of 1934.

Q. How long were you engaged in that work? A. I believe three or four months.

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Q. Did you receive any extra compensation for that? A. No, sir.

Q. Did you have any similar experiences to relate in other jobs? A. Yes, when they started to do cable work in the overhead bureau, that is, secondary cable work.

Q. When was that? A. That also I believe was the latter part of 1934.

Q. Did it run through until 1935 at all? A. It still continues, I believe, yes, sir.

Q. I mean, your particular job, did it run through until into 1935? A. Oh, these were intermittent jobs, 1778

S. M. 615

sometimes we would be doing line work, but certain men were picked.

Q. Who were the men who were picked, were you on this cable job? A. Another first grade lineman, or a first class lineman, Leo MacDonald, and another first class lineman, William Rogers, and another first class lineman, Alfred McDiggen, and numerous helpers and other linemen.

Q. Who assigned you to the work? A. I believe the general foreman. 1779

Q. What was his name? A. Well, it is Cherdron, John Cherdron.

Q. What was this work? A. It included pulling secondary cable into manholes, what are described as E boxes, car boxes, different type boxes, secondary work, splicing, making secondary joints, connecting lamps and the general secondary cable work there, pulling services into houses, connecting them.

Q. Was that work which your experience as a first grade lineman qualified you to do? A. No, there were a number, many, in fact a majority of the first class

1780 *William J. Kennedy—For N.L.R.B.—Direct*

linemen were not picked, there were just a few men picked for that type of work.

Q. Did you have to have special training and experience to be able to do that work? A. It required a cer-

S. M. 616

tain amount of preparation, yes, sir.

Q. How did you secure the preparation which enabled you to do that kind of work? A. Mr. Rogers, I believe, had done that type of work, first grade lineman, I referred to before, William Rogers, he had done that type of work on what they call a service truck.

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Q. Yes. A. And we were sent with a gang which he was connected with for a couple of days to break in on that type of work.

Q. I see, and you learned about it from him? A. Yes, sir.

Q. Then you went out and did it yourself, is that right? A. Yes, sir.

Q. Now, over what period of time were you engaged in doing that kind of work? A. As I say, on and off when there was cable jobs came in, new cables running in, we would be taken from line work and put on cable work.

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Q. Did you do it in 1935? A. Yes, sir.

Q. Did you do it in 1936? A. Yes, sir.

Q. Did you do any—can you tell us when you last did it in relation to the date of your discharge? A. Possibly within a month or so, just before I was discharged.

S. M. 617

Q. And was that done during your regular working hours, or was it overtime work? A. During regular working hours.

Q. What was—was there any other work outside of your regular duties that you performed from time to time by special reference? A. I don't believe so, except as a helper, I drove trucks, company trucks, line trucks.

Q. From time to time when necessary? A. Yes, sir.

Q. Well, that was up until when? A. Well, I done it continuously, sometimes when there is trouble and they can't get chauffeurs out they grab the nearest man, regardless of whether he is a lineman, a man in the overhead bureau or what he is, if he has a chauf- 1784
feur's license he can drive a company truck.

Q. During the period of time that you were employed by the company outside of these special assignments which you received, did you ever receive any particular commendation from any of your supervisors or our superintendent? A. The progressive increases, I think, speak for themselves. However, a month, about a month prior to the time, the day I was discharged, on this Monday night job I mentioned previously, it is customary where a gang finishes a job to let them go right to their homes. The truck had been sent out on this specific Monday. The job was 1785

started on a Sunday night. It was finished up around Monday noon and the foreman on that job that had been working with us all night was told not to let us go home, to pile us onto the truck and bring us over to the plant.

We were brought into the plant on the truck and there the general supervisor of all the district congratulated this gang, including myself.

Q. Who was that man? A. Mr. John F. Werner congratulated the overhead gang on doing this under-

1786 ground job in the dispatch and the neatness in the way they had resumed the service down there for the company. We were covered with dirt and dead on our feet. We had worked there all night without any let-up and I was one of the group that was congratulated. We practically worked on every hole there that night.

Q. How many hours did you work there that night? A. We worked straight through from approximately ten o'clock Sunday night until perhaps ten o'clock Monday morning.

1787 Q. Had you at any time prior to that received any special commendation from any superintendent or supervisor employee of the company? A. Well, that would go back to 1934, when the employees representation plan was established.

Q. What happened then? A. Shortly after this plan

S. M. 619

was formulated by the company, the bureau supervisor, at that time a Mr. Harrison G. Folland, came out on the job after I had been elected representative at large in the overhead bureau, and the foreman called me off a pole and stated that Mr. Folland wanted to see me.

1788 I came down off the pole. I took off the hooks and belt, and equipment, and I went over to Mr. Folland, who was sitting in his car.

He got out of the car and he walked a little distance away and then sort of nodded for me to follow him. I followed him up to a corner. We were working on a location in Forest Hills, Long Island, and Mr. Folland went into quite a description about how I had been elected to represent practically the entire overhead bureau, 350 men, and if it was up to him he doubts if he himself would have selected anybody else. I was just the type who could go in there and do a wonderful job for the men who elected me.

He went on at great length to describe the possibilities of this employee representation plan. In other words, telling me that I was just the man, that I had rapidly went through the first stages of helper, lineman, up to the top of the heap, that I was in a glorious position.

Toward the end, he did drop one in there that made me a little bit suspicious, that it had taken me these years to get to the top of the heap, I was on the top of

S. M. 620 1790

the heap now, as a first class lineman, as a representative representing the employees I had everything to lose and nothing to gain.

Q. Did you question him about that? A. I did, yes, sir.

Q. What did he say? A. I stated that it was my belief and my opinion that this plan had been formulated by the company to prevent a legitimate organization of employees in their own organization, and that there had been a board set up in each region of the United States and there was one in New York City, what was called at that time the Regional Labor Board. 1791

I considered his insinuation a type of coercion and that any further remarks like that he and I should take a walk down and see Mrs. Herrick.

Q. What did he say about that? A. Mr. Folland became very excited and stated that was not his intention, I misinterpreted his remarks, and a few other things that I don't remember offhand.

Q. And that ended that meeting? A. Yes, sir.

Q. Did you have any other conferences or conversations with the supervisory employees regarding the work which you were doing which indicated that they

S. M. 621

either approved or were commending you for the work which you were doing? A. Not that I know of, not that I can think of offhand, no, sir.

Trial Examiner Gates: We will recess until 1:30.

(Whereupon, a recess was taken at 12:15 o'clock p.m. until 1:30 o'clock p.m.)

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AFTERNOON SESSION.

Trial Examiner Gates: Are you ready?

WILLIAM J. KENNEDY, resumed the stand and testified further as follows:

Direct Examination (continued):

Q. (By Mr. Moscovitz) Mr. Kennedy, as I recall, this morning you were testifying about your jobs with the company up until the time you were discharged, your rate of pay, your classifications, and so forth. Do you recall that? A. Yes.

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Q. When you first went with the company, and I have in mind now the first time, before you resigned, were you a member of any labor organization? A. No, sir.

Q. Had you, before then, been a member of any labor organization? A. Never.

S. M. 622

Q. Now, after you resigned and went back to work the second time, were you a member of any labor organization? A. No.

Q. Had you, in the intervening period, become a member of any labor organization? A. No.

Q. How long after you went to work for the company the second time was it until you became a member of a labor organization? A. November, 1934.

Q. Yes. And what organization was that? A. The Brotherhood of Utility Employees of America.

Q. And that was your first affiliation? A. Yes, in any organization.

Q. Were you an organizer of that local? A. There were no classifications or titles of organizers. It was 1796
understood in the Independent organization that every man, every member, would be active as an organizer. In fact, it was the specific understanding that each man in each meeting would attempt to bring in other union members. That was our organization.

Q. Did you work with Mr. Wersing and Mr. Grulich in an endeavor to get membership in the local? A. Yes, sir.

Q. Were you in at the inception of the local? A. No,

S. M. 623

sir. 1797

Q. Did you come in after Mr. Wersing and Mr. Grulich had started their organizational activities? A. Yes, sir.

Q. How long after, do you recall? A. I don't know just when they started their organizational activities.

Q. Yes. A. But I had never even heard of Mr. Wersing or Mr. Grulich until I received a letter from Mr. Wersing.

Q. When was that? A. Which was the early part of November of 1934.

Q. Tell us about it. A. In reply to Mr. Wersing.

Q. What was that letter about? A. I have the letter here.

1756

S. M. 604

that was the maximum rate for that job.

Q. What was your maximum rate? A. I believe it was around $28.80 or something like that.

Q. Was that what you were getting? A. Yes, sir.

Q. Yes. A. I was told that within that department, the meter and test department, I could be transferred to the test department if I took an active interest in climbing poles and doing general testing, I could then be made a third grade lineman, a third class lineman. So I applied for that job and received it.

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S. M. 605

Q. (By Mr. Moscovitz) Did you get an increase in your rate? A. Yes.

Q. To what? A. I believe at that time it was around $31, something like that.

Q. Was that the work which you were doing when you changed your employment? A. No, I received another increase shortly after that. I was increased again to the second grade lineman in the same department.

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Q. What increase was that? A. $32, something like that.

Q. Was that the work you were doing when you changed your work? A. When I resigned from the company at that time.

Q. You resigned yourself? A. Yes.

Q. How long were you gone from the company? A. Approximately two years.

Q. Yes. And did you apply for reemployment? A. Yes.

Q. What work did you go back to? A. I went back in the overhead bureau of the distribution department as a first grade lineman helper.

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Q. What area did you work? A. The Flushing Dis-

S. M. 606

trict of the overhead bureau.

Q. What pay did you start at? A. $29.90.

Q. How long did you continue at that work? A. Just a short time. The supervisor of the district knew I had been a lineman in the test department.

Q. Who was he? A. At that time Mr. William Campion.

1760

Q. Yes. A. The duties of a lineman's helper are general. At that time we were driving trucks, helping linemen, general line work.

Q. Yes. A. He evidently knew of my previous employment as a lineman in the test department and I was allowed, although a first class helper, to do line work.

Q. That is quite unusual? A. I would say so, yes, especially a first class lineman. I was rated as a first class helper, but very often did first class lineman's work.

Q. Then you, for a while, were doing first class line work as a first class helper? A. That is correct.

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Q. Did it bring with it an increase in pay? A. Not

S. M. 607

immediately, no, sir.

Q. Did you receive an increase in pay at any time while you were acting as a first class helper? A. Only after I was re-rated and advanced to the grade of third class lineman.

Q. What was your next re-rating? A. That is quite difficult to answer. There were so many different grades. There were four grades of linemen; two grades of first

1762 class linemen, "A" grade and "B" grade, senior and junior; also a second and third grade lineman.

Q. What are the steps? A. You mean right from the very bottom?

Q. Yes. A. Third grade helper; second grade lineman's helper; first grade helper; third class lineman; third grade lineman; second grade lineman, first grade "B" lineman, and first grade lineman.

Q. Then, when you become a first grade lineman, you have reached the top of the scale in that particular
1763 work. Is that right? A. Yes.

Q. And when you are a first class helper, to a first class lineman, is the next step first class lineman? A. First class helper.

Q. Yes. A. No, absolutely not.

S. M. 608

Q. That is a third grade lineman, is that right? A. Third grade lineman to second grade lineman.

Q. What was your next step after you worked as a first class helper? What was the next job you had? A. Third class lineman.

1764 Q. Now, when did you get that job, do you recall? A. I believe in 1929.

Q. Did that bring with it an increase in pay? A. Yes.

Q. What amount? A. I believe $31.20, or $32.80. They changed so much, with general cuts——

Q. But you received an increase? A. Yes.

Q. What was your next job? A. Second grade lineman.

Q. Did that also bring an increase? A. Yes.

Q. What was your next job? A. First class lineman.

Q. Do you recall when it was that you became a first class lineman? A. I believe in '33 or '34—'34, I believe.

Q. 1934? A. 1934, yes.

S. M. 609

Q. Was that "B"? A. They had changed the old classification. Instead of "A" and "B", they had what we described as the Headache Twins of the time, "Min" and "Max", minimum and maximum rates.

Q. What were you, "Min" or "Max"? A. "Min".

Q. What was your rate then? A. $40.48, I believe.

Q. How long did you continue at that rate? A. Until I was fired by the company in June of 1936.

Q. Did you receive any reductions at that date? Did you receive any reductions at all during the period of time that elapsed between that date and the date of your discharge? A. Yes, sir. 1766

Q. Did you make any applications for reclassification during that period of time? A. Myself, personally?

Q. Yes. A. No.

Q. What would be the next step after first grade lineman in advancement? A. That is as high as a man can go in the overhead bureau of the distribution department. The next step would be that of a supervisor rec-

S. M. 610

ommending him for transfer to the service bureau, what is known as a trouble shooter. 1767

Q. Have you ever acted in such capacity? A. Not from the service bureau, no, sir, but I had been called out quite frequently if there was trouble on the overhead line of any section in Queens, invariably I was called to put the lines back in service.

Q. Was that work the trouble shooting? A. Yes.

Q. Did you receive extra pay for that? A. No, sir.

Q. Do they pick any first grade linemen to do trouble shooting when the situation requires, or are there special men whom you call on to do that work? A. I would say

case might be put in the form of having one organizer write whatever they want to put in evidence, in a letter to another organizer, and then

S. M. 626

no one else need have anything to do with it and then they would not need to have any witnesses or even any hearing.

Mr. Moscovitz: Of course, Mr. Examiner, Mr. Kennedy was not an organizer in 1934.

1805 Trial Examiner Gates: Please proceed with the examination, I wish to look over the document.

Mr. Moscovitz: All right.

Q. (By Mr. Moscovitz) At the time you received this letter from Mr. Wersing, which was November 1, 1934, you testified that you had not heard of him before, is that right? A. That's correct.

Q. And that was the first introduction to the name of Wersing, is that right? A. Yes, sir.

Q. Did you acknowledge the order? A. I did.

1806 Q. And did you at any time thereafter speak with Mr. Wersing? A. I did, yes.

Q. Do you recall when it was? A. I met Mr. Wersing at a place previously arranged. We had other correspondence. I replied to his letter and stated I would meet him.

Q. Yes. A. I received a letter back and he named the place and the time where he would be present.

S. M. 627

Q. You did meet him then? A. Yes.

Q. Do you recall when it was? A. Not the exact date, no, sir.

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Q. Do you recall whether it was many days or weeks after the letter of November 1, 1934? A. It was less than weeks—it was perhaps less than a week, within that same week.

Q. Now, at that time you still were not a member of the organization. Is that right? A. No, sir.

Q. Was any arrangement made between Mr. Wersing and yourself for your becoming a member of this organization? A. Yes.

Q. What was that arrangement? A. I wanted to know first what type of an organization it was, who con- 1808
trolled it, if it had a constitution and by-laws, and I asked Mr. Wersing many questions about the organization itself. During the questioning I was very much impressed by the type of man Mr. Wersing was. One thing very much impressed me, that he was a man of the same religious belief as myself. That, I did know, that it was customary for all labor organizations to be classified as radicals.

S. M. 628

During our first conversation, the first day I met Mr. Wersing, he said that evidently from my name I 1809
was Catholic, and I said——

Judge Ransom: Objected to. We have had practically every other issue locked in here in the way of hearsay conversation. Now, we have a conversation that these two labor organizers say they once had about each other. But I do object to the present method to lug in the religious issue also.

I move to strike out the entire answer as purely self-serving on behalf of a pair of organizers. Do you know what Mr. Kennedy's re-

1810

ligion has to do with this case? I submit, I do not.

Trial Examiner Gates: The motion to strike out the entire answer is denied. In general, the Board is not interested in the political or religious beliefs of any witness appearing in a hearing. I will ask you to go ahead, without the religious angle, Mr. Kennedy, please.

The Witness: All right, sir.

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Judge Ransom: What I want particularly to have stricken out is all of this tooting of one organizer for another, all this complimentary lauding of one labor organizer about another.

Trial Examiner Gates: I move that the answer may stand as it is.

S. M. 629

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) After you spoke with Mr. Wersing, I understand you entered into some arrangement whereby you became a member of this organization. Right? A. That is correct.

1812

Q. Did you discuss with Mr. Wersing your attitude regarding trade unionism? A. Yes.

Q. What was your discussion along that line?

Judge Ransom: Objected to as incompetent, not a method of proving any issue taken into this case. Discussions with two members of the organization which brought the charge, say, that they had with each other in November, 1934, is not within any issue here and is not binding in any way upon the respondents. A case cannot be created by such a narration of proposed conversation before the taking effect of the Wagner Act.

Trial Examiner Gates: The objection is overruled, but I suggest that there be a mark of limitation on this line of testimony.

A. Well, briefly, Mr. Wersing impressed me very much as a type of man that I would go along with in a labor organization——

Judge Ransom: I move to strike the present estimate of Mr. Wersing out. They both get the same salary and both work for the same organization. 1814

S. M. 630

Trial Examiner Gates: Motion to strike granted.

Q. (By Mr. Moscovitz) Outside of the fact that we agree that Mr. Wersing is a good gentleman, will you tell me whether or not you had with Mr. Wersing at that time a discussion regarding your desire or absence or lack of desire to become affiliated with his organization? A. I specifically stated that I would become a member of the organization which he represented, which we were discussing. 1815

Q. Yes. And it was then that you became a member on the date that you have already testified about. Is that right? A. Not at that date, no, sir.

Q. When did you become a member of it? A. I believe November 17th was the day I paid the initiation fee.

Q. 1934? A. Yes, sir.

Q. And you entered as a regular member, is that right? A. That's correct.

Q. And were you at that time a member of the plan? A. Yes, sir, I was a representative-at-large of the overhead bureau.

1816 *William J. Kennedy—For N.L.R.B.—Direct*

Q. How long have you been such a representative? A. From the formation of the plan in May, I believe, 1934.

S. M. 631

Q. Yes. You were elected by the men in your bureau? A. Elected by the men in the whole overhead bureau, yes, sir.

Q. How long did you represent them in that capacity? A. Until the end of the term, which was the end
1817 of May, I believe, of the following year.

Q. Well, how did you—from what time? A. From June 1st, I believe, of 1934, until the end of May, 1935.

Q. Being a representative-at-large at the time you were approached by Mr. Wersing, what was the reason for your being—for your becoming a member of a different labor organization?

Judge Ransom: I object to that as incompetent and not in any way binding upon the respondent, or under any issue here. The evidence is uncontradicted that many members of the
1818 Brotherhood continuously participated and voted and ran for office as they had a right to do under the system by which the employees chose their representatives.

Trial Examiner Gates: You may answer.

The Witness: At a meeting of the entire group of representatives, representing all the employees in the New York & Queens Electric Light & Power Company, held on the company premises at which is known as Central Service Station in Flushing, one of the company's main offices and headquarters, I opposed the plan itself as the method of collective bargaining. This

S. M. 632

was before my affiliation with the Independent organization.

This meeting had been called by Mr. James Mannix, at that time chairman of the general council representing all employees in the company. At this meeting Mr. Mannix passed to each representative, or had given to them every one of the requests which had been presented by the different bureau departments and members of the general council to the management. These 1820 included some forty in number and we were given them to study, both the request, itself, and the replies from the management.

It came out at this meeting that Mr. Mannix, himself, the chairman of the general council, mentioned it in a fashion that the only request which had been granted out of the whole forty was that seats were put on the office chairs in one of the offices. At that time I figured it was a good point to bring out. My attitude towards the plan itself, as to what it could possibly get for the employees as a method of collective bar- 1821 gaining; there was considerable friction at this meeting, but nothing was accomplished.

At that time some of them accused me, at least tried to accuse me, of being a member of some other organization and I was not at the time.

Q. (By Mr. Moscovitz) How long after you became a member of this organization did you become an

S. M. 633

officer? A. Did I become an officer of the Independent organization?

1822 *William J. Kennedy—For N.L.R.B.—Direct*

Q. Yes. A. After the local had received its charter from the national organization. In February, 1935, we held an election for our local in Queens, Queens Local 103, at which meeting I was elected general manager of the local.

Q. Yes, and up until that time you were just a regular member, is that right? A. That's right.

Q. And were you, during that period of time, engaged in organizational activity for the utility employees? A. Yes, sir.

1823 Q. And were you also during that period of time a member of the employee representation plan? A. That's correct.

Q. Did you continue your activities in the employee representation plan while you were also engaged in your brotherhood of utility employee activities? A. After I became affiliated with the Independent organization there was considerable discussion between myself and the men who had elected me as their representative in the overhead bureau, both, when we started, before we started to work in the morning, during lunch hour, after working hours, at the homes of the different employees, so that it appeared, it appears as though

1824

I was trying to ride two horses going different directions.

That was the statement made by some of the men, that the best thing I could do, and I thought myself that I should resign as the representative.

Q. Did you? A. I attempted to.

Q. How did you make that attempt? A Well, verbally, by letter through the company messenger service and through the United States Mail.

Q. When? A. At different times.

Q. Well, do you recall when you first did it? A. No, I don't.

Q Well, do you recall any one of the times when you did it as to the date? A. These were on numerous occasions, they eventually wound up in special meetings being called, one I insisted upon by the chairman of our council, Mr. William Fruin.

Q. When was that? A. That, I believe, was early in 1935, that was verbal.

Q Yes, go ahead. A. I approached Mr. Fruin, who worked in the same district as myself, and stated that 1826
I requested that he go down with me.

S. M. 635

Q. Was he a lineman, too? A. No, he is a clerk, I believe, in the office. I requested that he go with me before Mr. Folan.

Q. Who is Mr. Folan? A. At that time supervisor at the overhead bureau, and Mr. Fruin wanted to know what it was all about and I told him in part, that I was going to go before Mr. Folan to have a little understanding, and I requested him to be there.

Q. Why did you want to go to Mr. Folan? A. Mr. 1827
Folan was the man that I would go to, he is the bureau supervisor, to resign as bureau representative.

Q. Well, would you have to resign through Mr. Folan, the supervisor? A. Not necessarily.

Q. Had there developed a relationship between yourself and Mr. Folan in this employee representation plan work? A. Yes, sir.

Q. What was that relationship? A. Any bureau grievance was supposed to be adjusted, if possible, between representatives in the bureau and the bureau head, who was Mr. Folan.

1828

Q. Well, did you go to see Mr. Folan? A. I did, accompanied by Mr. Fruin.

Q. When was that, do you recall? A. Early, as I say, in 1935, I can't be more specific.

S. M. 636

Q. Tell us what took place there. A. I told Mr. Folan I had become affiliated with an independent organization, as such felt that it was embarrassing to be also a member of the employees representation plan, and I told him

1829 that I wanted to resign and Mr. Fruin was present at that time.

Mr. Folan requested at the time that I retain my connection with a representative of the bureau council, that would have a bad effect upon the employees in the overhead bureau if a man who was a representative in there attempted to, as he put it, throw the plan overboard.

Mr. Folan seemed to be, he was, in fact, visibly affected. He got up from his desk, put out his hand and took me by the hand and said that in all his years of connections, direct connections, with linemen, having

1830 been a lineman himself, for the first time in his life he was glad to shake the hand of a man who was sincere and honest enough to come to him and explain the action he had taken, that while he did not exactly agree that I had made the right step, he honored and respected me for so doing.

Judge Ransom: I move to strike out the witness's account of what a man now dead said in praise of the witness. If the witness will tell us some of his conversations with living men, it might be more probative.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

1831

S. M. 637

Q. (By Mr. Moscovitz) Was Mr. Folan your immediate boss? A. Yes, he was the Bureau supervisor.

Q. Had charge of all the men. Is that it? A. Correct.

Q. Did he have any conversation with you at that time about the independent Utility Employees organization? A. Not that I recall, no, sir.

Q. Was it as a result of that conversation that you continued your membership in the plan? A. Yes.

Q. Yes. But, did you continue being as active as you had been prior to that in the plan? A. No, sir. 1832

Q. Did you continue in any activity under the plan, or did you just retain your membership and your official position? A. There was some further activity. After the Flushing District had been transferred and merged with the Elmhurst District, there were many men in Elmhurst who I did not know. Most of them, however, had been told one way or the other about my action in becoming affiliated with the independent organization, and most of them had asked questions about it.

Most of them were strangers to me but they would approach me and ask me why and all about it, so to clarify the situation and bring it to some sort of a head, 1833 a petition was circulated among the men in the overhead bureau in the three districts, at that time, Flushing,

S. M. 638

Elmhurst and Jamaica. That was according to the constitution of the employees representation plan, and it specifically stated in the constitution that a meeting of all the members in a bureau can be called by sufficient signatures on the petition, accompanied by ten percent of the membership in any bureau. That petition was circulated, presented to Mr. Folan, according to the con-

stitution. Mr. Folan first attempted to prevent the meeting.

Judge Ransom: Move to strike out the statement that Mr. Folan did so and so.

You are aware that Mr. Folan is dead, aren't you?

The Witness: Yes, I am.

Judge Ransom: I assumed you did.

Trial Examiner Gates: It may stand.

1835 Judge Ransom: Exception.

A. There was considerable discussion about the holding of this meeting. Mr. Folan pointed out the expense that would be entailed in conducting such a meeting, calling in some 350 overhead men an hour ahead of time. I also pointed out at that time further that the constitution had provisions in it, in the same constitution of the Employees Representation Plan, that reasonable and necessary expenses in connection with the plan itself would be borne by the management. The ultimate result was that instead of one meeting there were two meetings. At the time of the meetings, Flushing had been

1836

S. M. 639

merged with Elmhurst and one meeting was held there. Another meeting was held the following day in the Jamaica District for the men in the other Jamaica District.

Judge Ransom: Move to strike out the answer on the ground, first, that the witness is testifying to matters which took place long before the enactment of the Wagner Act; in the second place, as to matters not within any issues tendered by the complaint; in the third place, it is merely the witness' version of a purported conversation

with a man whom the witness now knows is not living and able to contradict him.

Trial Examiner Gates: Motion to strike is denied.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Continue. A. The first meeting took place in the Elmhurst district, representing a majority of the men in the overhead bureau. At this meeting the chairman of the council, Mr. Fruen, acted as chairman, conducted the meeting. It became apparent to me within a short time after the meeting was 1838 opened, that Mr. Fruen was going to use the whole hour of the meeting of the employees in the district——

Judge Ransom: It—I move to strike out what became apparent to this witness. I submit that evidence cannot be created in any such way. If it could be there would be absolutely no limits to what could be brought in to this hearing. It is

S. M. 640

purely hearsay, conjecture, of this witness, argumentative. 1839

Trial Examiner Gates: Objection denied. It is important to this hearing to know what was said.

Q. (By Mr. Moscovitz) Tell us what was said. A. Well, I broke in on Mr. Fruen and did succeed in getting the floor and attempted to point out to the employees that we had gained nothing as far as any collective bargaining to be gone into with the management.

Judge Ransom: I object to that as purely self-serving, ante dating the Wagner Act and not related to any issues tendered by this complaint.

1798 *William J. Kennedy—For N.L.R.B.—Direct*

Q. Do you? A. Yes, sir.

Q. Do you recall what was contained in the letter? A. That Mr. Wersing had learned that I had discovered that the company or, rather, the employees representation plan, was a futile method of attempting any sincere and genuine collective bargaining.

Judge Ransom: I move to strike out the argument of this labor organizer as not responsive or competent, he can't testify what Mr. Wersing

1799 S. M. 624

speculated about. Mr. Wersing did his own speculating.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Tell us what the purpose of the letter was, that is, as you read it.

Judge Ransom: I object to that, the letter speaks for itself.

Mr. Moscovitz: All right, I offer then, Mr. Examiner, the letter.

1800

Judge Ransom: I object to it as incompetent, not within any issues here, the complaint makes no allegation or undertakes to state no cause of action as to the employees representation plan. Further, the letter is purely self-serving, a letter from one labor organizer to another, evidence cannot be created or manufactured in that way for the purposes of quasi-judicial proceedings.

I make also the point, in addition to not being within any issue tendered by the complaint, it long antedates the taking effect of the National Labor Relations Act and is not within any issue

here, relates purely to matters outside of the jurisdiction of this Board.

Trial Examiner Gates: Do you wish to make any further statement, Mr. Moscovitz?

Mr. Moscovitz: Well, this letter, Mr. Examiner, simply points to a background in this case

S. M. 625

of the manner in which Mr. Kennedy was introduced to Mr. Wersing, and establishes the first 1802
step that Mr. Kennedy took in regard to the organization that he was a member of at the time of his discharge.

I am of the opinion that it should be accepted as a part of the history of the activity of this witness. The whole question as far as this person, being whether or not he was discharged because of his union membership and activity, and I don't think the fact of his activity precedes the enactment of the National Labor Relations Act and prohibits the introduction of this document—

Trial Examiner Gates: Does it serve any——

Mr. Moscovitz: Well, there is nothing probative about this, I am not trying to establish anything that goes to the merits, outside of a background that I think important in this case so that the Board may be in a position to know just what this person's organizational activity has been from the time he started until he was discharged. 1803

Trial Examiner Gates: Let it be marked as an exhibit.

Judge Ransom: May I point out to your Honor that if this method is proper it would be much easier, and in fact it would avoid the attendance of any of us here if the Government's entire

1846

and I did have dealings with Mr. Folan and conversations and meetings with him afterwards.

Q. And those—are those conversations about which you have not yet testified? A. That is correct.

Q. Well, tell us when it was that you had your first conversation with Mr. Folan about your affiliation with the independent organization?

Judge Ransom: Objected to—well, let me fix the date, if he will. I do not object to the fixing of the date.

1847

A. I cannot fix the date. If it was the latter part of '34 or '35 that most of this took place. They were very busy days, and I kept no records of time or place.

Q. And was it after you had become an officer of the independent union? A. I believe so. My letter to Mr. Folan, I believe, would prove that.

Q. Now, aside from the conversation that you had with Mr. Folan, as a result of your having sent the letter to him, was there any other conversation which you had? A. The first time at which Mr. Fruen went down with me, it was all verbal. Shortly after that, I

1848

believe, after I became general manager of the Queens Local I sent a letter through the company messenger

S. M. 644

service to Mr. Folan.

Q. And what was that letter about? A. That I had been elected an official of the Queens Local, and did not feel that I could continue longer as a representative of the employee representation plan.

Q. And is that despite his previous request? A. That's correct.

Q. Did you receive a response? A. Mr. Folan sent for me.

William J. Kennedy—For N.L.R.B.—Direct

1849

Q. When did you see him? A. The same day that he sent for me, I believe the day after I sent the letter.

Q. And what was the conversation you had with him?

Judge Ransom: I object to that as incompetent, this conversation is purely self-serving and it is an effort for the witness to testify in his own behalf to a conversation with a person now deceased, and it wholly ante dates the Wagner Act and not within any issue tendered by the complaint.

1850

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.

The Witness: Practically the same conversation as the first meeting with this exception, the conversation was the same as the first meeting, Mr. Folan advised me not to resign from the company union but to stick it out until the end of the term. I agreed that day to continue as a representative. However, I received a phone call, I

S. M. 645

1851

believe it was a phone call, that same night from one of the other representatives. I regret to have to bring this part out.

Judge Ransom: I object to it as wholly incompetent and self-serving, not within any issue, evidence can't be created by the present narration of conversation to which the company was in no way a party. The witness can easily be saved embarrassment.

Trial Examiner Gates: Perhaps it will be easier to rule if there is a question before the witness.

1852 Q. (By Mr. Moscovitz) From whom did you receive a telephone call? A. Mr. John Young.

Q. Who is he? A. He was a bureau of council representative from the Elmhurst district.

Q. What was his job with the company? A. First grade lineman.

Q. And did you receive this telephone conversation after you had spoken with Mr. Folan? A. Yes, the evening of the same day.

Q. And this was either in the latter part of 1934 or
1853 the first part of 1935? A. That's correct.

Q. What was the conversation with the representative?

S. M. 646

Judge Ransom: I object to that on the grounds already stated.

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.

The Witness: Mr. Young's statement to me was that he had heard that I had gone to Mr. Folan and on this specific afternoon requesting
1854 that I be allowed to resign as representative of the Employee Representation Plan. He had also heard that Mr. Folan convinced me that I should not resign because of the effect it would have upon the rest of the employees, but Mr. Folan had left me after getting this assurance that I would not resign, had gone to Elmhurst, waited for the line truck on which Mr. Young was working that date, to come into the yard and had then called Mr. Young off the truck and told him that the best thing he and the best thing the representatives could do was to get rid of that radical.

Kennedy, that was Young's idea that I was not allowed to resign that it would be a feather in somebody's cap if I could be kicked out rather than be allowed to resign.

Judge Ransom: I move to strike out the answer as not within any issue here, there is no allegation in the complaint as to the Employees Representation Plan, no claim that anything took place by reason of it. This all antedates the Wagner Act. This is about third degree hearsay, ordinarily we have been taking only second degree. 1856

S. M. 647

Trial Examiner Gates: How much of your testimony there covers direct statements to you by Mr. Young?

The Witness: Practically all of it.

Judge Ransom: Well——

Trial Examiner Gates: What did not?

The Witness: I believe all of it.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception. 1857

Q. (By Mr. Moscovitz) That was the extent of the conversation with Mr. Young? A. That's correct.

Q. What did you do then? A. I contacted Mr. Fruen, the chairman of the bureau council.

Q. The same night? A. The following day, the following morning around eight o'clock in the morning I suggested or demanded that he call a special meeting of the bureau council to discuss my conversation with Mr. Folan and Mr. Folan's attitude after the conversation.

Q. Was such a meeting called? A. It was.

Q. Where? A. In a room in the same central service station at Flushing.

1858

Q. Now, do you recall when that meeting was called? A. No, sir.

S. M. 648

Q. Would you say that it was in 1935? A. Yes, sir.

Q. The earely part? A. Yes, sir, it must have been, we were still representatives?

Q. Still before you were an officer of the Utility Employees? A. No, I believe at that time I had been elected general manager of the local.

1859

Q. So that it would be after February, 1935? A. I believe so, yes.

Q. And were the men in attendance at the meeting? A. Yes, sir.

Q. What took place? A. The meeting opened by different representatives presenting some minor grievances for adjustment by Mr. Folan who represented the management and he finally got around to the situation that I had insisted the meeting be called for.

Q. Was Mr. Folan there? A. He was.

Q. Yes, go ahead. A. Mr. Folan and two representatives from the Jamaica district, two representatives

1860

from the Elmhurst district, and two representatives from the Flushing district.

Q. Were there any other representatives of management at the meeting in addition to Mr. Folan? A. No, sir.

S. M. 649

Q. All right, will you name some of the other persons who were in attendance at that meeting? A. Mr. Fruen of Flushing, as chairman of the Bureau of Council; Mr. William Righison, secretary of the council from the Jamaica district; Mr. Frank Casey represented the

overhead bureau of the Jamaica District; Mr. John Young, representative from the Elmhurst district; Mr. Albert Martini of the Elmhurst district and myself from Flushing.

Q. Yes, now tell us what took place in regard to your particular problem? A. I——

Judge Ransom: I object to that on the grounds already stated.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

1862

The Witness: I asked Mr. Folan if he remembered our conversation of the previous date when I offered to resign. He said that he did.

Q. (By Mr. Moscovitz) And was this in the presence of all these men whom you have already listed? A. Yes, sir.

Judge Ransom: Can you fix the date?

The Witness: No, I could not, I kept no record of it, see.

Q. (By Mr. Moscovitz) I understood that it was after February,1935? A. I believe it was after February.

1863

S. M. 650

Judge Ransom: But before May or before June?

The Witness: I have no definite dates on it.

Q. (By Mr. Moscovitz) Go ahead. A. Mr. Folan stated that he did remember the conversation. I asked him if he remembered anything that happened later that afternoon, and he said, "No, not in particular."

And I said, "Do you recollect that I was quite angry about this whole affair", and I said, "Do you remember stopping a truck in Elmhurst and talking to another man

and stating that they should get rid of that radical, Kennedy," and he said, no, that he did not.

Mr. Young was in rather a spot at that time but he did not hesitate, he got right up on his feet and he stated, "You certainly did, you said it to me."

So I said to Mr. Folan, "Well, that being the situation and the way the case stands at the present time, I absolutely refuse to resign. I decline to resign, and I will stick this thing out to the finish regardless of statements made by anybody that I am carrying water on
1865 both shoulders or riding horses going in different directions.

Q. And that was the extent of that? A. Mr. Folan answered by stating that he represented the management and what else could he do under the circumstances.

S. M. 651

Q. Did he make any further statement? A. Not that I can remember, no, sir.

Q. Did you attend any special meetings or regular meetings after that? A. There were special meetings called, one in particular, by the management, at the
1866 time, I believe, the officials of the company.

Q. And did you attend that meeting? A. I did.

Q. When was that? A. That also was in '35, I don't know just what time.

Q. Did you have—do you have any notes that would help you refresh your recollection? A. No, I just try to get down months, we never kept any track, we were so busy day and night that we didn't keep no record at all of anything.

Q. And you say you met with the officials of the company; do you mean officers of the company? A. That is correct.

Q. Where was that meeting? A. This also took place in the central service station in Flushing.

Q. And who were the officers of the company? A. If I remember correctly, Mr. Gordon, treasurer of the company, Mr. Porter, Mr. Waterhouse.

S. M. 652

Q. Who is Mr. Porter? A. I am not sure of his title, I believe it is assistant to the president or something like that.

Q. Who is Mr. Waterhouse? 1868 A. I believe his title is personnel manager, I am not sure of any of these titles.

Q. Were they from your company? A. Yes, sir.

Q. And how many men attended? A. Employees?

Q. Yes. A. The same six representatives previously mentioned and also Mr. James Mannix, the former chairman of the general council.

Q. Who gave you notice of this meeting? A. Mr. Fruen, chairman of our bureau of council.

Q. Did the notice specify the purpose of the meeting? A. My notice was verbal.

Q. What was the notice? 1869 A. That we were to meet the management at a certain time on a certain day.

Q. What was the purpose of the meeting? A. I was not exactly positive myself.

Q. Well, after you got there? A. It became——

Q. What did you find the purpose of the meeting was? A. Mr. Gordon opened up the meeting by stating

S. M. 653

that the president of the company was unable to be there and that in his place he would act as chairman and would represent the president and he started off

1870 with a sort of a speech about the company, was quite proud of the type of men they had in the overhead bureau, that they were always considered the most loyal employees and also the most well paid, and he could not understand this sudden dissatisfaction in the overhead bureau itself, that the only possible answer to it would be that there were some agitation or agitators, radicals, and about that time I broke in. He had talked at some length by that time and stated that he had an idea—I stated to him that I had an idea who he was talking
1871 about and who he was talking to and I felt that I was the man, at least one of the men, having been the most active and his remarks were addressed particularly to me, and I resented it, I admitted being an agitator, if he wished to call it that, and an organizer, if he wished to call it that, but I resented being called a radical or anything like that.

I again pointed out something that was objected to before also, my membership as an official of the American Legion at the time and other things I mentioned.

Q. (By Mr. Moscovitz) And was the reference to dissatisfaction made more specific by Mr. Gordon or his
1872 associates? A. Not that I remember.

S. M. 654

Q. Did he refer to the Brotherhood of Utility Employees as such? A. Not by name, no, sir.

Q. Simply to the agitation that was going on, is that correct? A. That is correct.

Q. Did you make any further statement? A. Not to Mr. Gordon or not along those lines that I remember.

Q. Did Mr. Gordon have anything further to say after you had expressed yourself? A. Except for one statement that he said he didn't exactly mean it in just the way he expressed it.

Q. Did any of his associates have anything to say at the meeting? A. Not along those lines, no.

Q. Did that conclude the meeting insofar as organizational activity discussion was concerned? A. Yes. At that time the meeting was apparently ready to break up. Everybody was on their feet about ready to leave and I continued to sit there. I didn't feel exactly quite right about the whole situation, the way it had taken place, and certain things that were mentioned.

Q. What things are you referring to? A. Well, Mr. Gordon's statements, in particular. 1874

Q. Yes. A. While I sat there, one of the officials finally, if I am not mistaken, Mr. Waterhouse, came over

S. M. 655

and said, "What did you think of the meeting?" Well, the frame of mind I was in, I said, "What meeting?"

He said, "Well, the meeting that just took place here."

I said, "As far as I am concerned there wasn't any meeting."

He said, "What do you mean by that?"

And I said, "This is about the most important meeting as far as the overhead bureau is concerned that has taken place, that we had definitely contacted and met with the officials of the company, but still, in spite of this very important meeting, we had nothing to take back to the men who had elected us. There was no word of any kind, no collective bargaining, nothing had been discussed." 1875

And he shrugged his shoulders and walked away.

Q. Did you then leave? A. I believe that was the end of that meeting, yes.

Q. Did you report back to your membership on the meeting? A. Yes.

1876 *William J. Kennedy—For N.L.R.B.—Direct*

Q. At a regular meeting? A. Yes.
Q. Told them what took place? A. Yes.
Q. Do you recall when that was? A. No, I don't.

S. M. 656

Q. Would you say that this meeting with Mr. Waterhouse and the other gentlemen took place some weeks or months after February, 1935? A. It may have been some weeks or months after February, 1935.

1877 Q. Would you say it was the middle or prior to the end of 1935? A. It would be between February and May.

Q. Between February and May? A. Yes.

Q. Were there any special meetings that you attended up until the time that you disassociated yourself from the plan?

Judge Ransom: He said his term expired.

Q. (By Mr. Moscovitz) Or after your term expired? A. With the plan itself?

Q. Yes. A. No.

Q. All right. Now, as I understand it, at the same
1878 time you were very active in your independent union activities? A. That is correct.

Q. At the same time that this meeting was going on with Mr. Waterhouse, you were vitally interested in the affairs of your independent organization, is that right? A. Very much so, yes, sir.

Q. And you had been, during the period immediately preceding that meeting and the period after that meet-

S. M. 657

ing, actively engaged in securing membership, is that right? A. Yes.

Q. And had you succeeded in securing membership? A. I would say yes, very much so.

Q. While you were engaged in this activity, did other supervisory employees discuss with you the work that you were doing at any time? A. As far as the independent organization?

Q. Yes. A. It would be purely hearsay.

Q. Well, I mean persons who spoke with you directly? A. No.

Q. After your period, or connection, with the plan expired, you ran for no other office. Is that right? 1880
A. In the Representation Plan?

Q. Yes. A. No. We were, however, renominated. We declined the nomination. We were elected and we refused to be elected.

Q. When you say "we" were renominated, do you refer to the six gentlemen about whom you have been testifying? A. No, five of the six were then members of the Independent organization.

Q. Who were they? A. All by the chairman.

S. M. 658

Q. That is Mr.—William— A. William Fruen. 1881

Q. Yes. A. Mr. Fruen was a clerical man. The rest were all linemen or chauffeurs, the majority linemen.

Q. You say that all of you refused to accept the nomination? A. Our local, at a meeting prior to the nominations for the coming year, for the employees representation plan, a motion was made that none of us accept the nomination, have anything further to do with the plan.

Q. You followed that motion? A. That is correct.

Judge Ransom: Will you give those names, please?

1840 *William J. Kennedy—For N.L.R.B.—Direct*

Trial Examiner Gates: Motion to strike denied.

Judge Ransom: Exception.

A. I also stated that my idea of collective bargaining could only be indulged in successfully by building an independent organization that was controlled by the employees themselves and not dominated or financed by the management.

Q. (By Mr. Moscovitz) And was that the final statement made by yourself at that meeting? A. That is correct.

1841

Q. Did you make any other similar statement at any other meetings on the same day? A. There were questions from the Employees themselves, both through myself and to Mr. Fruen.

S. M. 641

Q. Were they representatives of management, officials of the company, were they in attendance at that meeting? A. Not in the room itself.

Q. Although the meeting was held on company property. Is that right? A. That is correct.

1842

Q. Did you attend the second meeting? A. Yes.

Q. Where was that? A. That took place the following day at the Jamaica district of the overhead bureau of the distribution department.

Q. Was that also in the offices of the company? A. That is correct.

Q. And who presided at that meeting? A. The chairman of the same bureau councils.

Q. Did you make a similar statement at that meeting? A. Practically the same, yes.

Q. Were any representatives of the company or officials of the company in attendance at that meeting? A. Not to my knowledge.

Q. Were there any foremen or supervisors there? A. Were there—there were a couple of foremen there when the meeting started and one of the other representatives noted him there and requested the chairman to ask him to leave.

S. M. 642

Q. Did he leave? A. Yes, they left.

Q. What was the date of the second meeting? A. It was immediately after the date of the Elmhurst meeting. 1844

Q. Do you have the date of that meeting? A. No, sir.

Q. Do you say some time in February? A. Early in 1935.

Q. Did you attend any employee representation plan meetings after that, or engage in any employee representation plan activities after that? A. The bureau council had meetings approximately once a month.

Q. And you attended all of those meetings? A. Yes.

Q. What was the last meeting of the bureau of council that you attended? A. The last one I attended, I believe, was the last month we had election of officers and representatives. 1845

Q. That was when? A. May 10, 1935.

Q. After you became general manager of the local of the Utility Employees Union, did you have conversations with any supervisory employees of the company about your new affiliation? A. I do not like, any more than Mr. Ransom or anybody else, to be continually bringing in Mr. Folan. I realize the fact that he can-

S. M. 643

not defend himself, but he being my bureau head, he is the only man I could possibly have any dealings with,

1888 *William J. Kennedy—For N.L.R.B.—Direct*

Q. Did you serve as president of the national organization without pay? A. Every man in our independent organization served without pay. There were no salaries.

Q. Did that also apply to the business manager? A. Yes.

Q. Was it reported, to your knowledge, to the company, that you were elected national president of this organization? A. Not directly to my knowledge. I believe it was quite evident. It was in the public press,
1889 in all our bulletins, different periodicals that were circulated by the organization.

Q. What public press are you referring to? A. The general newspapers, Queens and New York City.

Q. I see. And were there any statements made to you by any of your supervisory employees after you were elected, about your new job in the organization? A. No, sir.

Q. Did you, after becoming national president, have occasion to take any questions up for your organization with your company? A. Not until three officers of the Queens local were fired.

1890 S. M. 662

Q. Are you referring to Mr. Wersing, Mr. Wagner and Mr. Grulich? A. Correct.

Q. That was then in November, 1935, is that right? A. Correct.

Q. At the time you took up those cases you were no longer acting as general manager of the Queens local, is that right? A. After having been elected into the national office, I resigned my position as general manager with the local. Most of my time was spent then in the national office.

1891

Q. Did you serve on a committee for the purpose of taking these cases up with management, or did you serve in an individual capacity? A. I served as chairman of the emergency committee which was established the day or the day following the discharge of these men.

Q. Who was the organizing—who was on the emergency committee? A. The first committee was a sub-committee of the executive committee of the local, consisting of four men.

Q. Who were they? A. Myself as chairman, Mr. John Young, a first class lineman from Elmhurst; and 1892
Mr. John Emler, another first class lineman from Elmhurst, and Mr. Jack Shulter, I believe his position with the company was that of meter tester.

Q. Now, did you spend a great deal of time in this organizational work? A. The independent Brotherhood

S. M. 663

of Utility Engineers?

Q. Yes. A. Yes.

Q. And was it done during or after working hours? A. With the exception of meetings that I described previously, the one in Elmhurst and the one in Jamaica, all 1893
of them, with those exceptions, were before eight o'clock in the morning when we started to work; during lunch hour, after work, and practically every evening, going to different homes.

Q. Was your committee called an emergency committee? A. The night it was placed in operation, yes. It was a sub-committee of the emergency council of the local. It was called an emergency committee.

Q. Was it appointed by the membership? A. It was appointed by the executive council of the local that evening.

1894 *William J. Kennedy—For N.L.R.B.—Direct*

Q. With whom in management did you get in touch for the purpose of taking these cases up? A. A letter was dispatched, I believe, to the president of the company, Mr. Frank W. Smith, I believe, requesting an interview to discuss the discharge of three officers.

Q. Was the letter signed by yourself? A. Yes.

Q. And did you obtain such an interview? A. I believe the reply was by the telephone which came into our

S. M. 664

1895 local. No, I received a letter from Mr. Smith stating that the procedure he would suggest would be that the committee contact Mr. Dean of New York and Queens Company to discuss the situation.

Q. Did you contact Mr. Dean? A. The committee did, yes.

Q. Did the committee meet with Mr. Dean? A. Yes.

Q. Do you recall when that was? A. The latter part of November, or the early part of December, 1935.

Q. Did you meet him at his office? A. Yes.

Q. Tell us what took place at that meeting? A. The committee, consisting of Mr.——

1896 Q. May I ask first whether or not there were any other representatives of management in attendance in addition to Mr. Dean? A. Mr. Waterhouse was there at the time.

Q. Now tell us. A. The committee consisting of Mr. Emler, Mr. Young, Mr. Shulter and myself.

Q. Were you chairman? A. Yes, sir.

Q. All right. A. Yes.

S. M. 665

And as such acted as spokesman for the committee. I stated to Mr. Dean that we were there to discuss the discharge of the three officers of our local.

1897

Mr. Dean stated that he did not know anything about it, while he did know that two of them were definitely members of the local, it had no bearing on the case and why didn't I mention the other three men.

Well, I didn't know anything about any other three men.

Mr. Dean stated that six men were being laid off, laid off or discharged, I forget just which word he used, and he said that they were officers of the local discharged, that was merely a coincidence, so I stated to Mr. Dean that six men are being discharged, 50 percent of the six men who are being discharged constitute 100 percent of the officials of the local and I would have a considerably difficult time explaining to the members of the local that it was merely a coincidence.

1898

There was further discussion about it and I stated to Mr. Dean that the situation was becoming extremely critical and that only one man could stop it. He waited and I told him that that man was himself.

So he more or less waived, and said that there was nothing that he could do about it, and I don't believe anything else happened.

1899

Q. Did he tell you who the other three men were that were discharged, or laid off? A. No, sir.

S. M. 666

Q. Do you know? A. He did not state that the company's reason—that is, he then stated the company's reasons were that the company was discontinuing a bureau, they were making room for married men by firing single men or laying off single men.

Q. Did he tell you what bureau was being discontinued? A. No, sir.

Q. Do you know who these other three persons were that were discharged or laid off. with Wersing, Grulich and Wagner? A. No, sir.

1900

Q. Do you know whether or not—I will withdraw that. Did you have any discussion with him regarding the seniority rights of these men? A. Yes, I did.

Q. And what was that discussion? A. Mr. Dean's statement was that seniority rights did not exist, the company always did and always would retain the right to hire and fire any employee at any time.

Q. Now, you testified before that this meeting was either the latter part of November or the first part of December; you don't mean, do you, that it was the

1901 latter part of November, the discharge? A. The discharge took place, I believe, on the 20th.

S. M. 667

Q. So that this meeting would be the first part of December? A. I believe so, yes, sir.

Q. All right, did you point out to Mr. Dean what you were going to do about the situation in view of the fact that it had become so critical? A. I did. I stated that we were there as a committee representing the members of our organization, there was nothing else for me to do but to return to the organization

1902 and submit our report about what had taken place in the meeting with himself.

Q. Was there any reference made to the possibility of a strike being called? A. I believe so.

Q. Was it made by you or by Mr. Dean? A. We started to walk out, when we were, when he saw that nothing could be accomplished there, when we saw it also, we were half way to the door and the other men preceding myself and Mr. Dean said, "Just a moment."

And I turned around and Mr. Dean said he hoped there would be no rash acts. I believe those were the exact words he used. I stated that on a couple of occasions within the last couple of days there were

1903

certain statements in the newspapers mentioning sabotage, destruction of property and other descriptive words, that none of them had come from any member of our organization, it had all come from officials of

S. M. 668

the company and the affiliated companies.

Q. Is that the only conversation you had on that point? A. As far as I remember, yes, sir.

Q. Did you report that to your membership? A. I did.

1904

Q. Was there then an emergency meeting called on the basis of your report? A. A special meeting was called.

Q. When was that, do you recall? A. Also in December, that is as definite as I can be about it.

Q. The early part of December? A. I believe so, yes.

Q. 1935? A. 1935.

Q. What was the purpose of that meeting? A. To submit a report, on the discussion that had taken place with Mr. Dean, to also submit reports on the people who had been contacted to protest.

1905

Q. Yes. A. After these reports were submitted, while I was making my report, some of the members insisted that a vote be taken that night, whether they should strike, if necessary, in order to reinstate these men to their positions with the company.

Q. And with whom was the discretion left for the calling of a strike if necessary? A. The strike vote was

S. M. 669

taken. I protested against the taking of this vote at that meeting.

1906

Q. You mean a strike vote? A. Yes.

Q. Yes. A. However, I was overruled, the majority seemed to be very anxious for action of some sort to reinstate these men and the strike vote was taken and time and place and date and hour of the strike was let in the hands of the then strike committee which automatically became a strike committee after the strike vote was taken.

Q. Well, did your emergency committee become the strike committee? A. Yes, sir.

1907

Q. So that you remained then as chairman of the strike committee, is that right? A. That's correct.

Q. And did you take any further steps to secure the reinstatement of the discharged persons to avert the possibility of a strike? A. We did.

Q. What did you do? A. All that we considered possible, letters and telegrams to Mayor LaGuardia, the same thing to the Public Service Commission, the Gov-

S. M. 670

ernor of the State of New York and I believe the State Department of Labor, and numerous patriotic and fra-

1908

ternal and political societies, et cetera.

Q. Did any of these letters or conferences with—did any of these letters to public officials or conferences with public officials result in the reinstatement of these persons? A. No, sir.

Q. Was there any arbitration machinery set up for the submission of this controversy? A. We met at Mayor LaGuardia's office one morning. We were requested to appear there. The sub-committee of the strike committee representing the union, our attorney, Mr. Dean, was there, Mr. Sidney Cohen, that is correct. I believe.

Q. Mr. Sidney Cohen? A. Yes, and Mrs. Elinore

Herrick was appointed, I believe, by Mayor LaGuardia to be his personal representative at that conference. Mr. Dean, and I believe an attorney for the company, a Mr. Portenhauer, and Mr. Largay of the State Department of Labor.

Q. That was still before the holiday in December of 1935? A. Oh, yes.

Q. And was there a discussion at that time regarding the submission of this question to arbitration? A. Mayor LaGuardia asked if it would be submitted to arbitration that he be allowed to appoint an arbitrator. 1910
Mr. Cohen, representing us, agreed, Mr. Dean declined,

S. M. 671

stating that there was nothing to arbitrate.

Q. And that broke off further negotiations, is that right? A. That is correct. However, Mr. Dean was requested by Mayor LaGuardia to call him later in the afternoon and give it some consideration and let him know if he had changed his mind. Mr. Dean stated that, well, perhaps he would call but his answer would remain the same.

Q. And that was the last effort made by any public 1911
official to dispose of this question, is that right? A. No, I believe not.

Q. Well, what else took place then? A. Mr. Largay came to our local headquarters in Queens a day or two later and stated that he had spoken to Mr. Dean but could not get any place and came back to tell me and tell our organization that there was nothing he could do, he was very sorry, and he also asked me what I, as chairman of the strike committee, intended to do. I stated to Mr. Largay that I, as an individual, felt responsible for the men. The majority of the members of our Queens local, that I had been instrumental in

1912

bringing them into the organization, that it was my belief that the company did not care whether they went out on strike or not. There was not any too much work as far as the overhead bureau was concerned and overhead men constituted the majority of our membership. With the idea in mind that if they did go out,

S. M. 672

they would be locked out, I probably would not call a strike, that there would not be any strike, especially as it was a bad time of the season also, the public would immediately turn against us and that I would give myself about six months with the company, if I did not call a strike.

1913

This was in January, and six months later in June I got the axe.

Judge Ransom: I move to strike out the witness' argument in his behalf, wholly self-serving, not within any issue here.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

1914

Q. (By Mr. Moscovitz) So that a strike was not called and the matter was then dropped, is that right? A. That's correct. We had numerous visitors from other organizations pledging support, powerful international and national unions in the city, but I did not think that our men could possibly win and especially around that time of the year; the strike, however, was not called.

Q. Did these visits from other organizations continue into 1936? A. 1936?

Q. After the holiday season? A. In some cases, yes.

S. M. 673

Q. Did you then bring the matter formally to the attention of the Labor Board? A. That was not any Labor Board at that time, there wasn't any.

Q. I see. You mean there wasn't any Labor Board in existence in New York City at that time?

Judge Ransom: Don't shake your head. Did you mean to answer that, did you answer that in the negative, you just shook your head.

The Witness: Well, that was part of the answer, no, I don't believe so. 1916

Q. (By Mr. Moscovitz) Did you continue then as president of your national organization after this strike talk disappeared? A. Yes, sir.

Q. Was the strike vote ever rescinded or did it just fall? A. It just fell apart, that's all.

Q. The committee disbanded? A. The strike committee?

Q. Yes. A. Yes.

Q. All right, did you continue your organizational activity after your conferences with the Mayor in 1935? A. Yes, sir. 1917

Q. Did you continue them up to the time of your discharge? A. I did.

S. M. 674

Q. Now, were these activities in support of your desire to secure more membership? A. Yes, sir.

Q. And did you secure membership during that period of time? A. I did.

Q. Now, after the committee disbanded, can you tell me whether or not your membership began to weaken, or whether or not there was an increase in member-

1882

Mr. Moscovitz: Sir?

Judge Ransom: Could you give the names of those men?

Mr. Moscovitz: I think he has already given them, but I will ask him again.

Q. (By Mr. Moscovitz) Will you give them again? A. It is practically the same group that I had given previously, Mr. Frank Casey, and Mr. William Wrightson, from the Jamaica district. Mr. John Young, Mr. Albert Martini of the Elmhurst district and myself from the Flushing district.

1883

Q. So that new officers were elected in your place, is that right? A. That is correct.

S. M. 659

Q. And they continued until such time as the plan went out of existence, is that right? A. They continued for the following year, '35 to '36, I believe.

Q. Were they in position at the time you were discharged? A. Oh, yes, in fact, some of them, I believe, had been promoted.

1884

Q. At the time you were discharged? A. That is correct.

Q. When you say "promoted", you mean to better jobs? A. Transferred out of that department to some other position.

Q. Which men? A. One man especially, Mr. George O'Brien, who received, I think, four votes, acted as employee representation plan representative for that year. Right after this term, I believe, he was transferred to some other position within the company.

Q. Now, after February 29, 1935, you acted as business manager of your local? A. General manager.

Q. General manager of the local? A. Yes, practically the same thing, yes.

Q. But you had complete charge of the organization; is that right, of your organization? A. That is the functional organization. It is ex-officio chairman of certain publicity committees and so forth.

Q. Who were the other officers? A. At that time Mr. Wersing was president of the local. Mr. Wagner

S. M. 660

was the treasurer and I believe Mr. Grulich was the vice president.

1886

Q. Had you elected a secretary? A. Mr. Wrench.

Q. How long did you continue as business manager of this organization? A. Until I was elected a delegate of the national convention which took place in Providence.

Q. Providence, Rhode Island? A. Yes.

Q. When? A. I was elected a delegate to that convention in July, 1935. The convention itself took place the following month, August.

Q. 1935? A. 1935.

Q. Did you go to that convention? A. I did, as a delegate.

1887

Q. And were you elected to a higher organization position at that convention? A I was.

Q. What was the position to which you were elected? A. At that convention I was elected national president of the national organization, Brotherhood of Utility Employees of America.

Q. How long did you hold that position? A. Until

S. M. 661

the independent organization had set up a committee to discuss and negotiate affiliation with the American Federation of Labor and the I.B.E.W., the International Brotherhood of Electrical Workers.

1918

ship? A. There was a considerable weakening among the members. I would say it dropped in the membership, a drop in the membership.

Q. At this point? A. Yes, around January.

Q. 1936? A. 1936, yes.

Q. And did you then further your efforts to bolster this fall and increase membership? A. Oh, yes.

Q. So that your activities became more intensified. Is that right? A. What was possible, yes.

Q. And had you taken any steps after January,
1919 1936, to negotiate with the company for an adjustment of any grievances or disputes?" A. Not that I remember, no, sir.

S. M. 675

Q. Was your organization planning a campaign for the purpose of eventually submitting a proposed contract to cover certain units within the company's operations? A. That I believe took place after I went out of the company in June.

Q. Were you encountering, after January, 1936, any interference by the company in your organizational
1920 work? A. Many of the foremen of these line trucks made many statements that undoubtedly had a considerable effect upon the members.

Q. Who were the foremen to whom you refer? A. I could not say one by name, but many of the members I used to hear them discussing it, especially at meetings, that this foreman said this or that foreman said that.

Q. In reference to your organization? A. Yes, that the officials of the company stated that they could replace any man who went out and save considerably.

Q. Was there any change in policy after January, 1936, by your independent organization in regard to

1921

its relation with the employees representation plan? A. After 1936, after January, 1936?

Q. Yes. A. Yes, I believe it was decided early in 1936 that nothing had been accomplished in the previous year with the representatives and the employee representation plan. For that reason the men who were

S. M. 676

formerly the representatives the first year should go back in again.

1922

Judge Ransom: I move to strike out the answer as not responsive and wholly incompetent and outside any issues here.

Trial Examiner Gates: Will you repeat the question and answer, please?

(The reporter repeated the last question and answer.)

Trial Examiner Gates: It may stand, but it seems to me that the meaning is not clear.

Mr. Moscovitz: The meaning of the question or the answer?

1923

Trial Examiner Gates: The answer.

Q. (By Mr. Moscovitz) Well, is that your full answer to my question? A. I could condense it perhaps better than that.

Q. Then try to condense it, please. A. The five men, members of the brotherhood, who were formerly representatives the first year, would go back the third year and again represent the employees.

Q. And did you all run again to office in the employees representation plan? A. We did.

Q. Did you run, too? A. I did.

1924

S. M. 677

Q. Were you all nominated? A. We were.

Q. Elected? A. We were.

Q. Who was elected? A. Our own situation, of course, was of primary importance to us——

Judge Ransom: I move to strike out the witness' arguments. He was asked simple questions, called upon or names.

1925

Q. (By Mr. Moscovitz) Tell us who were elected.

Trial Examiner Gates: The motion to strike is granted.

Q. (By Mr. Moscovitz) Tell us who was elected. A. Mr. Young and myself, and Mr. Emloff from Elmhurst.

Q. Did you find yourselves elected to the job that you held previously? A. I did.

Q. Delegates at large? A. Representative from the Elmhurst district.

Q. Is that known as representative-at-large? A. No, there were no more representatives-at-large.

1926

Q. It had been changed in that regard? A. The combining of the districts changed that.

Q. Did you at the same time continue your job as president of the national organization? A. I had re-

S. M. 678

signed from the national organization as president when they became affiliated with the I.B.E.W.

Q. Now, when had that national organization, when did the national organization become affiliated with the I.B.E.W.? A. Not the national organization. I was incorrect there. Our local.

1927

Q. When did your local become affiliated with the I.B.E.W.? A. April, I believe, of 1936.

Q. And did you then become a regular member of the I.B.E.W.? A. That's correct.

Q. Without office? A. Correct.

Q. Did you resign before becoming a member of the I.B.E.W.? A. I did.

Q. Did you resign from the Utility Employees organization or was the Utility Employees organization absorbed by the I.B.E.W.? A. Absorbed by the I.B.E.W. Reorganization in the I.B.E.W.——

1928

Q. Who were the officers of the new I.B.E.W. local? A. Mr. Wersing.

Q. They are the officers that you have already listed? A. No, they combined all of the locals, all of the former locals.

Q. What locals did you find yourself in after reorganization? A. Local B-752 of the I.B.E.W. That covered all the former independent locals in New York

City.

1929

Q. How many former independent locals had there been? A. Three, offhand.

Q. What were they? A. Brooklyn Local had a specific number, 102, I believe it was; Queens Local, 103; local New York, Local 100, I believe.

Q. They all became then part of the one local of the I.B.E.W.? A. That's right. They all became Local B-752 of the I.B.E.W.

Q. Mr. Wersing, you say, became president of that local? A. He was elected president.

Q. Who were the other officers elected? A. Mr. Schubert. I don't know who the others were.

1930

Q. What was Mr. Schubert's position? A. Secretary, I believe.

Q. And was it, then, the decision of the members of the I.B.E.W. that you men run for office in the employee representation association? A. That I don't believe was ever brought out into a discussion at any meeting that I attended.

Q. Well, in any event, was this decision to run for office in the E.R.A., or the E.R.P., made after you became affiliated with the I.B.E.W.? A. Not officially,

1931 just among our own members in the overhead bureau in the New York & Queens Company.

S. M. 680

Q. Well, was it made, though, before or after you became affiliated with the I.B.E.W.? A. It was made prior to affiliation with the I.B.E.W.

Q. Before you knew you were going to become affiliated with the I.B.E.W.? A. That is correct.

Q. And how long did you continue as a representative in the E.R.P.? A. The second term.

Q. Yes. A. I was elected on June 11th and fired on

1932 June 19th. I was nominated and elected and fired before I officially took office.

Q. Now, at the time you became a member of the I.B.E.W., had you taken any steps to secure membership in the I.B.E.W.? A. Before we affiliated?

Q. Yes. A. Yes, before we affiliated we were trying to build up our independent organization.

Q. But after you became a member of the I.B.E.W., did you go out and attempt to bring employees into membership in the I.B.E.W.? A. Oh, yes.

Q. So that you then became an active member of the I.B.E.W.? A. Very much so, yes.

1933

S. M. 681

Q. Did you succeed in securing members for the I.B.E.W.? A. I did.

Q. From your own bureau? A. Yes.

Q. From other bureaus, too? A. Yes.

Q. Did you spend all of your time outside of your working hours in this activity? A. I would say the majority of it, yes.

Q. And you were then, too, at the same time working as a representative of the E.R.P. Is that right? A. No.

1934

Q. Never had a chance to do that? A. No, sir.

Q. All right. Mr. Kennedy, after you became an active member of the I.B.E.W., did you bring the matter to the attention of management? A. Personally?

Q. Yes. A. No, sir.

Q. Did you have discussion with your supervisor or any supervisory employees about the reorganization? A. No, sir.

Q. Did it appear in any publication that the independent organization, of which you were national president, had undergone a reorganization and was now a

1935

S. M. 682

member of the A.F.of L.? A. Oh, yes.

Q. In what publications did that appear? A. In the Brotherhood News, I think it was.

Q. Is that a regular publication? A. It was a publication that was put out by all of the combined locals.

Q. Of the I.B.E.W.? A. No, of the independent organization.

Q. Of the independent utility employees? A. That is correct.

Q. Well, did it then appear in that utility employees

1936 publication that you had reorganized? A. I don't remember whether it came out in that or not.

Q. When did it cease being published? A. I couldn't say on that. I had nothing to do with the publicity.

Q. But after you became a member of the I.B.E.W., and after its reorganization had been concluded, did it appear in the publication, in the public press, for instance, that your organization, the organization of which you were national president, had gone over to the American Federation of Labor? A. Yes, I believe so.

1937 Q. Did it appear in any literature that was circulated, to your knowledge? A. Oh, yes, leaflets.

S. M. 683

Q. And were those leaflets, leaflets distributed for organizational purposes? A. Very much so.

Q. Around the plant? A. All over the system.

Q. Were these leaflets, leaflets gotten up by the I.B.E.W., your local? A. By our local, yes.

Q. That is, by your local of the I.B.E.W.? A. Yes.

Q. After April, 1936, when you became a member of the I.B.E.W., is that right? A. That's correct.

1938 Q. You testified that you continued your regular organizational activities? A. Yes.

Q. Now, it was after that that you then became nominated to the plan? A. Yes.

Q. Did you attend any regular meetings of the employees representation plan? A. No, sir.

Q. And at any time before your discharge? A. Be-

S. M. 684

tween April——

Q. Between April and your discharge? A. Didn't have very much time, no, sir.

Q. You did not have very much time? A. No, sir.

Q. Had you received notice that you were to be discharged? A. No, sir.

Q. What was the day of your discharge? A. June 19th.

Q. And when were you to be formally inducted into the office as a member of the employee representation plan? A. July 1st. I had already received notification that I had been elected.

Q. And from whom did you receive this notification? A. Signed by George O'Brien, Mr. M. J. Keller, A. Elli- 1940
son.

Q. What time of the day was it that you received notice of discharge?

Judge Ransom: Just a moment. Were they the Board of Tellers, or something of that sort?

The Witness: O'Brien, I believe, was a representative at that time.

Judge Ransom: You mean a bureau representative?

The Witness: Yes, I believe so.

Q. (By Mr. Moscovitz) Can you tell me what time 1941
of the day it was that you were discharged? A. Shortly

before noon.

Q. By whom were you discharged? A. I received notification by a Mr. Paine, of the personnel bureau, that was on, not the 19th, but the 18th.

Q. What was the notice? A. It was brought out by Mr. Tom Green, general foreman of the Elmhurst district of the overhead bureau. He came out to the job and asked my foreman if I was in the gang. He stated that I was, and he said, "I have a note for him," and he

handed me the note. The note was simply that I was to report to Mr. Paine in such and such an office in Long Island City.

Q. Did you report to him the next day? A. That same day.

Q. You did? A. Yes.

Q. Did you find him in? A. Yes.

Q. Did you see him? A. I did.

Q. What took place? A. Mr. Paine asked me to sit down. I sat down. Stated that he had some bad news
1943 for me. I told him I guessed as much. He stated that I was a surplus employee. I asked if it took eight and a half years to discover that I was a surplus employee.

S. M. 686

Mr. Paine made some statement. He seemed to be rather embarrassed. I said, "How did you come to select me?" He said he had nothing to do with that. I said, "Well, what procedure do you go through in selecting your surplus employees?"

He couldn't answer that. He said, "Suppose I tell you this way, that naturally when they have to lay off
1944 surplus employees they always retain, or we always retain the most valuable men."

So I said, "Well, using your own statement, then, who is more valuable in an overhead bureau than a first class lineman, not that I wish to cast any reflections on the ability of a second class lineman or a first class lineman, but you will have a tough time showing me who is a more valuable person in the overhead bureau than a first class lineman, and the three men that I see who are to be laid off, who are classified as surplus employees, are all first class linemen."

He didn't know anything about that. He didn't know anything about the situation at all evidently.

1945

Judge Ransom: I move to strike out the witness's argumentative statement, and ask that he confine himself to what was said.

Trial Examiner Gates: Motion to strike is granted.

Stick to your statement and to Mr. Paine's statement.

S. M. 687

1946

Mr. Moscovitz: What is being stricken, Mr. Examiner, just the last?

Trial Examiner Gates: The reporter will read.

Mr. Moscovitz: Just the last statement made by the witness?

Trial Examiner Gates: Yes.

Mr. Moscovitz: All right. That is all right.

Q. (By Mr. Moscovitz) Can you tell me, Mr. Kennedy, whether or not it was brought to your attention that other persons were being discharged at the same time? A. Nothing was brought to my attention except the men I saw down there, three of them, were union men, and they were definitely laid off, and one was not a union man and he was definitely not laid off.

1947

Q. Were there other men waiting to go in and see Mr. Paine with you? A. The man who accompanied me down there was a man that had spent years in the employ of the company.

Q. What was his name? A. William Baake. He was a Norwegian.

Q. Yes. A. He had been a lineman for many years. He was working in the same gang I was working in.

Q. How many years have you been with the company, do you know? A. Mr. Baake had been with the company on and off for a good many years, this last time

S. M. 688

I believe something like eleven years.

Q. And who was the other man that you found? A. Another man who had been elected a representative at the same time I was, Mr. John Emler.

Q. Who was the other man? A. The other man appeared later, his name was Stein, James Stein, if I remember correctly.

Q. Now, the two men in addition to yourself, you say, were union men, with the exception of Mr. Stein?
1949 A. That's correct.

Q. Who was a non-union man? A. That's correct.

Q. Now, the three of you men were discharged, is that right? A. Yes, sir.

Q. Was Mr. Stein discharged? A. He was not.

Q. What was he doing there then? A. He was evidently sent down there, I asked him what he was there for, and he said he was sent down by Tane in the personnel bureau, I said I guess you got the same thing we got. He could even answer me, he was all upset and excited the same as we all were.

Q. Did you find from him later that he was not dis-
1950 charged? A. Yes, I know that he is still working for the

S. M. 689

company, continued to work for the company, well, within a day or so after that.

Q. Well, was he laid off for a day or two? A. Not that I know of, no, sir.

Q. You don't know whether or not at the time of your discharge you had more seniority than other men in your division? A. Oh, yes.

Q. Can you name men who were left in the employ of the company as first grade linemen over whom you

had greater seniority? A. Well, not offhand, I know there were many of them.

Q. Do you know the names of many? A. Yes, quite a few.

Q. Would you mind naming them? A. Well, I would say the majority.

Q. You had more seniority than the majority? A. I believe so.

Q. Of first grade linemen? A. Yes.

Q. How many first grade linemen were there? A. When they combined the two districts, Flushing and 1952
Elmhurst, they must have had at least 70 linemen.

Q. Will you say that you had greater seniority than the majority of that 70? A. Well, the men from the former Elmhurst group, I would not know, but I be-

S. M. 690

lieve so, I am quite definite about the men from Flushing.

Q. Certainly of the men from Flushing, is that right? A. Yes, sir.

Q. And can you tell me whether or not other first grade linemen were laid off or discharged at any time 1953
after your discharge? A. Not that I know of, no, sir.

Q. Were there any laid off or discharged, to your knowledge, at any time before your discharge? A. No, sir.

Q. They weren't? A. Not that I know of.

Q. Do you know whether or not there were any layoffs or discharge from your line of work, first grade linemen, within the few weeks preceding the date of your discharge? A. No, sir.

Q. Were any steps taken by you to secure reinstatement? A. No, sir.

Q. Can you tell me whether or not Mr. Paine ex-

1954 *William J. Kennedy—For N.L.R.B.—Direct*

plained to you what a 'surplus employee was? A. He did, in so many words, that there was not enough work for all the men in the bureau, and these men who were classified as surplus employees could be laid off right there with a separation allowance, that is, two weeks'

S. M. 691

pay for each year of service, or transferred to a temporary job with some other company, where there were vacancies.

1955 Q. Did you receive a separation allowance? A. I did.

Q. Have you heard the term "surplus employee" used before in the system? A. Never, no, sir.

Q. Can you tell me whether or not there was plenty of work for you to do at the time you were discharged?

Judge Ransom: I object to that as wholly incompetent and calling for a conclusion.

Mr. Moscovitz: I will withdraw the question.

Q. (By Mr. Moscovitz) Can you tell me whether or not you had completed your particular job at the time you were discharged? A. Completed the particular job?

1956 Q. Yes, were you working on some job that was incomplete? A. Yes, I was taken off the job.

Q. You were taken off a job to be discharged, is that it? A. Correct.

Q. What job was that? A. We were digging trenches, laying pipe, pulling services, underground service into consumers' premises, connecting them up, cutting them in, splicing, stripping poles, taking down overhead wires, general combination of overhead work, line work, cable

S. M. 692

work, service work, not only did the work slow up, but it increased, in fact, within a few days after these men,

including myself, were fired we had been working a five-day week, within a few days after we were fired they went on a six-day week and transferred additional men into our bureau from other departments.

Judge Ransom: I move to strike out all the answer as not responsive to the question that asked for information as to a particular job on which the witness claimed he was engaged.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception. 1958

Q. (By Mr. Moscovitz) What was the salary at the time you were discharged? A. My salary?

Q. Yes. A. $40.48.

Q. You want to go back to work for the company, do you not? A. I do, yes.

Mr. Moscovitz: That's all.

Trial Examiner Gates: We will recess for five minutes.

(Whereupon, a short recess was taken.)

After Recess. 1959

Trial Examiner Gates: Proceed.

CROSS EXAMINATION:

S. M. 693

Q. (By Mr. Ransom) Mr. Kennedy, in testifying to your numerous alleged conversations with Mr. Folan, you were aware that he is dead? A. Oh, yes.

Q. And do you know when he died? A. Do I know when he died?

Q. Yes, about? A. I believe it was the last day that I was a representative in the company union.

Q. That would be in June of 1936? A. I believe in May of 1935.

Q. At the time you were first a member of the council of the overhead bureau? A. That's correct.

Q. In testifying to this telephone conversation with Mr. John Young, were you not testifying to an alleged conversation with another organizer or active worker in the C.I.O. organization? A. No, there was no C.I.O. organization.

Q. Well, I mean, at the present time, isn't Mr. Young a member of that organization? A. The question is a little bit out, as far as I am concerned, I don't disclose the membership of any men in our organization.

Q. Well, will you say to this Board that Mr. Young, with whom you had, or claimed that you had, this tele-

S. M. 694

phone conversation to which you testified, that Mr. Young is not an organizer or active worker in the C.I.O. organization?

Mr. Moscovitz: I object to that question, Mr. Examiner.

Trial Examiner Gates: The question as I understand it is not whether he is a member, but whether he is an organizer.

Judge Ransom: An active worker.

Mr. Moscovitz: In the C.I.O. at the present time?

Trial Examiner Gates: That's right.

Judge Ransom: That is correct.

Mr. Moscovitz: I object to that question. I don't see that that is a question——

Judge Ransom: Well, I want to——

Trial Examiner Gates: Just a minute, do you

1963

wish to amend the question so that it refers to open and notorious activity?

Judge Ransom: I will ask first this question: Isn't John Young, with whom you say you had this telephone conversation to which you testified, isn't he at the present time openly known as an organizer or active worker of the C.I.O.?

A. I still say, Mr. Ransom, that I never disclose the membership of any man in the organization, with all due respect to yourself.

1964

S. M. 695

Judge Ransom: I ask that the question be answered, because here is a witness who is an organizer in the organization which brought this charge, and as far as I am concerned his testimony would not arouse the slightest interest but for the fact that it is made up of alleged conversations with a dead man and alleged conversations with a fellow organizer in the C.I.O., so I am entitled to have the record show that.

1965

Mr. Moscovitz: Mr. Examiner, I would have no objection to this witness answering the question as to whether or not Mr. Young is an organizer of the C.I.O., that is, a paid organizer who is working for the C.I.O., but I don't think that it is proper that there be elicited from this witness testimony regarding the organizational activities or desires of presently employed workers in the system because of the obvious—first, because obviously the men are fearful of disclosing their identity for fear that there may be some form of reprisal taken against them; secondly, it is certainly not a question that is prob-

1966

ably subject to cross-examination, nor is it at all relevant to the proceeding that we have here before us.

The question regarding Mr. Young that was raised on direct testimony was one that did not relate at all to the present activities of the C.I.O.

Trial Examiner Gates: Just a minute, I think the question is proper, I will ask you to answer it.

S. M. 696

1967

The Witness: Which part of the question?

Trial Examiner Gates: The question last put to you. Will you please repeat the question?

(The reporter repeated the last question as follows:

"Q. I will ask this question: Isn't John Young, with whom you say you had this telephone conversation to which you testified, isn't he at the present time openly known as an organizer or active worker in the C.I.O.?")

1968

Mr. Moscovitz: I think, Mr. Examiner, the question is a bit confusing. There is quite some significance to be attached to the word "organizer", and the question, I think, should be first of all split into two questions.

Judge Ransom: Well, I have changed my question at the suggestion of the Examiner. I will now also change it at the suggestion of the government.

Trial Examiner Gates: He may answer.

A. Mr. Young is not at the present time an organizer for the C.I.O.

Q. (By Judge Ransom) Is he an active member in

the C.I.O.? A. Do you mean is he a member of the C.I.O.?

Q. I am asking you if he is an active worker in the C.I.O.

Trial Examiner Gates: I have indicated that the question should be limited as to the openness on the part of his activities, if he is active.

S. M. 697

Judge Ransom: Well, for the moment, I will ask the witness whether Mr. Young is known as a worker or active worker in the C.I.O. 1970

A. Mr. Young is actively a worker, a member, very active in the affairs of the C.I.O., yes.

Q. (By Judge Ransom) Now, you gave an extended picture of your work for the company. Did you say anything to the Board about the fact that in, for example, the 12 months prior to the termination of your employment, you were absent about 20 per cent of the time? A. Did I state that I was absent?

Q. About 20 per cent of the time? A. No, I did not.

Q. Is that the fact? A. I have never judged it as far as percentage is concerned. 1971

Q. Would you say it is approximately correct? A. No, I wouldn't say it is approximately correct. I will say that I did lose time. In the nature of the work, it is necessary to be gone frequently doing work in shallow "R" boxes with water pouring in in order to finish a job which has been started while it was thawing, and that I believe was in January of 1936, when I frequently had to do that.

Q. Well, without going into argument about it, were you shown——

Mr. Moscovitz: I think, Mr. Examiner——

S. M. 698

Judge Ransom: He may explain on redirect, if he wants to.

Mr. Moscovitz: But the witness is not permitted to answer his question.

Judge Ransom: He is not going to answer it yet. I asked the witness a question, whether a statement that you were absent during the 12 months approximately 20 per cent of the time was

1973 about correct.

A. I have no way of knowing.

Q. (By Judge Ransom) And during the 12 months before that, were you absent from work approximately 16 per cent of the time? A. The same answer—I don't know.

Q. You couldn't, don't want to give any impression to the Examiner as to whether that is true or false? A. I have no idea of knowing the approximate time that I lost, no.

Q. I think you testified that you resigned from the company twice during the period of your employment?

1974 A. No, I resigned once.

Q. You resigned once completely from the company and resigned once from the night inspection work? A. That was a job, it was a secondary job. In addition to regular duties, men could get extra money, men in the lower paid brackets, by riding around in their own car nights replacing wornout electric bulbs, if you call that

S. M. 699

a resignation. I still maintained my permanent job with the company.

Q. At the time of the termination of your employment, you stated that you received a separation allow-

1975

ance of two weeks for each year of service? A. That is correct.

Q. At your weekly rate of pay? A. Correct.

Q. And that meant that you received how many weeks' pay as a separation allowance? A. 16 weeks for 8 years of service. The other 6 months' service were not accounted for in any way.

Q. That being prior to your first resignation, prior to your resignation? A. It had nothing to do with the resignation at all.

1976

Q. In other words, you were paid up to about the middle of October, 1936? A. It was around that time, yes.

Q. About how many employees took part in this strike vote to which you testified on direct examination? How many votes were cast at the meeting on that question? A. How many votes were cast?

Q. Yes. A. Well, I can only guess, well over 300.

Q. Is that purely a guess? A. Well, it is very close

S. M. 700

to the exact figure.

1977

Q. Have you stated all that took place in connection with the termination of your employment? Have you given the Examiner and the Board the whole story? A. All that took place?

Q. Yes. A. With my severance of connections with the company?

Q. Yes. A. No, I don't think so.

Q. Well, directing your attention particularly to what took place on the 19th of June, that is the day you say you were discharged? A. Yes, I believe what you refer to began the day previous to the 19th of June, Mr. Paine offered me, or made the offer, rather, of a temporary position, or to be laid off immediately.

1978 Q. And that temporary position was with one of the Manhattan companies? A. That's correct.

Q. You went over to Manhattan, you and the other men who were being laid off for slackening of work, in that Bureau, you went over to Manhattan to see about that job, didn't you? A. We knew nothing about the slackening of the work.

Q. Well, leaving that out for the moment, did you go over, you did, didn't you? A. The three of us did

1979 S. M. 701

go over, yes.

Q. That was you and Mr. Emler and Mr.— A. Mr. Bakke.

Q. Mr. Bakke? A. Yes.

Q. And that was in pursuance of Mr. Paine's offer to you of a temporary position rather than lay-off? A. That's correct.

Q. Did you or did you not take that temporary position? A. I was not offered a temporary position.

Q. Well, what took place about it? A. Mr. Paine gave each of us a note to take to, I believe, the em-

1980 ployees, the employee department, the employment department, of the Consolidated Edison Company at 4 Irving Place. We went to No. 4 Irving Place and found out that the note contained a certain statement that I, as a surplus lineman, wished to be considered for electrical vacancies. We stayed in that department that afternoon, and at 4:30, when we were told to come back the next morning, which would be June 19th——

Q. Well, did you or did you not wish to be considered for electrical vacancies? A. That is further on in the story.

Q. Did you or did you not? A. I still say that is

S. M. 702

further on.

Q. Well, I ask you for an answer to that question for the moment. A. We knew nothing about electrical vacancies at that time.

Q. Well, did you or did you not wish to be considered for electrical vacancies? A. We wished to find out something about these temporary positions.

Q. That's the only answer you have? A. Yes, sir.

Q. Well, you say you came back the next morning? 1982
A. Correct.

Q. Where did you come to then? A. What was that?

Q. Where did you go to the next morning? A. To the same place.

Q. All right, that is June 19th? A. June 19th, we were directed to a Mr. Sohl, I believe his name was, the three of us.

Q. Where was he located? A. One of the floors at 14th Street Building.

Q. In what department? A. I believe the construction department.

Q. And what took place? A. Mr. Sohl told me 1983
about what vacancies existed, the type of men he wanted

S. M. 703

were electrical mechanics, he asked me if I had any experience in wiring switchboards, cut-outs, switch panels, etc., and I stated that all my experience with the company had been as a first class lineman.

Q. Well, you did not mean that, of course, did you? A. Certainly I meant it.

Q. All right. A. Practically all of my experience had been in the first class lineman work, what I meant was,

that it was quite plain to me that they did not need any first class linemen in a generating station. He stated that he could not use me as an electrical mechanic, but I might be considered as an electrical mechanic's helper.

Q. Now, for this wiring work? A. I suppose so.

Q. Well, what did you do about it? A. I told him that I resented the fact, first, that I was classified as a surplus employee after being on the payroll for eight and a half years on a permanent status; second, that
1985 I resented being classified as a helper after proving my ability as a first grade mechanic and lineman; third, that undoubtedly there would be a drastic cut in pay if I accepted this temporary position.

Q. Did he tell you, or did you ask him what the rate of pay was for the work? A. I did.

S. M. 704

Q. For the work for which you were seeking men to do this class of wiring? A. I did.

Q. What did he say? A. That the position of electrical mechanic's helper, that the maximum was about
1986 $30 a week. I was then receiving, or up until that time, $40.48.

Q. So what? A. So I declined the position. About the time I started to decline he said he had not even offered it.

Q. Did Mr. Emler and Mr. Bakke do the same thing? A. I believe so, they told me so.

Q. They were with you, were they? A. Yes.

Q. And then what did you do? A. Then we were sent from there back, I believe, to the employment bureau and from there back to the personnel bureau of the Queens Company.

1987

Q. Now, was it that time that you came back there on the 19th that this conversation, you say, which you previously testified to, took place? A. That's correct.

Q. Now, after the termination of your employment, into what business did you go? A. I secured a retail

S. M. 705

beverage license to operate a bar and private club.

Q. Can't we agree on calling it a saloon? A. Oh, never, a saloon is a public place, this place was restricted to members only, and therefore a private club.

1988

Q. It has been some years since I have known that way of getting alcohol in this state; how long did you run this private club for the retail sale of alcoholic beverages in the Borough of Queens? A. How long did I run it?

Q. Yes. A. Well, I don't know whether I am still running it or not, I did make an investment in there and as far as I know, it is still in there.

S. M. 706

Q. Well, are you participating actively in its operation? A. No, I am not.

1989

Q. Just where in the Borough of Queens was this private club for the retail sale of liquors located? A. Where was it located?

Q. Yes. A. 13-39 122nd Street, College Point, Long Island.

Q. I still won't argue with you about what you called it, but some time after you became actively engaged in the operation of this private club for the retail sale of liquor did you receive any word from any one connected with the company relative to employment as a lineman? A. Oh, yes.

1990 Q. And from who did that word come? A. A Mr. Smith of New York and Queens.

Q. Mr. Smith who is in the personnel bureau of that company? A. I believe he is in the personnel bureau, yes.

Q. And you were acquainted with Mr. Smith? A. Yes, I knew Mr. Smith by sight.

Q. Can you fix the approximate time that you heard from Mr. Smith relative to work as a lineman? A. The latter part of 1936, I believe, I cannot be exact
1991 about that.

Q. You mean perhaps in November or December? A. Yes, I believe around that time.

S. M. 707

Q. And will you state, as you recall it, if you are able to recall it, what was the message which you received? A. The message I received?

Q. Yes. A. The first message was over the telephone. I had just gotten to bed. You see my club activities ran into the small hours of the morning.

Q. Clubs often do. A. Pardon?

1992 Q. I say, clubs often do. A. Yes. Things were rather hazy. I had only been in bed a short time. Somebody else answered the phone and I was put on and found out it was Mr. Smith, that he wanted to see me something about a job for a lineman. I told him I would get down there about noon.

He said he wanted to see me before noon.

I told him that was the best I could possibly do. So I got down there as soon as I could, which was about noon. Prior to going there, I called up the local and stated that Mr. Smith had called me, had a vacancy for a lineman, that there was a vacancy for

1993

a lineman, and I told them to try to get in touch with Mr. Emler. When I got down to Mr. Smith's office I found Mr. Emler already in conference with Mr. Smith. When he came out, I went in.

Mr. Smith started describing this job. This is all very hazy to me. As I say I hadn't had much sleep,

S. M. 708

working in this beverage job all night, but the first few words of Mr. Smith made it quite plain that the job was not a lineman's job with the New York and Queens.

1994

Q. A lineman's job with another public utility? A. Yes, but I make the point that Mr. Smith was offering me a job with another company.

Q. Was he offering you a job or was he telling you about a job? A. Well, why did he call me in then if he had a job with another company?

Q. Isn't it a fact that inquiry had been made of him by another company which had vacancies for a lineman? A. That is correct. I inquired about the job's salary, and the pay for a first class lineman in that company was the pay of a first class helper with the New York and Queens.

1995

Q. Under those circumstances did the attraction of the retail sale of beverages by private club seem to be greater? A. I don't say it was greater. There was no attraction when I found out the job was not with the company.

Q. In any event, you did not take it. A. I did not.

Q. Do you know whether Mr. Emler did? A. Mr. Emler did.

Q. I think that is all.

1996

S. M. 709

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Judge Ransom asked you about the percentage of time that you lost in the 12 months preceding the termination of your employment with the company? A. Yes.

Q. Had you lost that time because of illness? A. Yes, I had been sent home by company doctors.

1997

Q. Yes. And weren't you directed to take that time off at the request of the company doctors? A. That is correct.

Q. And does the same go for the percentage of time you lost in the 12 months prior to that 12 months period? A. Each time I went home I was sent home by a company doctor. They took my temperature and so forth.

Q. And will you explain why? A. Yes. I started to explain before, that working in these shallow boxes, especially this one time, reference to January, 1936, I had been working in what is known as an "R" box. It is a box about 3½ foot deep, supposed to have a drain

1998

in it but they become clogged with sand and mud, and this time during the season of the thaw, water was continually pouring in there and I did get a thorough soaking in attempting to finish a job which had been started prior to the time the sun came up and started to thaw. I developed an illness from it, went to a company doctor right from the job, and he took my

S. M. 710

temperature and sent me home. Now, he could have sent me home for a couple of days, which he did, but upon my returning back to work, I was notified that I

was to be sent to the company farm. I did not ask to be sent to the farm, or sent away, but on both occasions I was sent away by the company each time for three weeks, which will chalk that 20 percent down considerably.

Q. When was that? A. 1935 and 1936.

Q. And were you ready, willing and able both those times to go back to work without going to the farm? A. I was undoubtedly weak from the illness but I was willing to go back to work and I possibly could have gone back to work. 2000

Q. All right, when you were discharged and classified as a surplus employee, did Mr. Dean discuss with you the fact that you had been ill during the period, during certain periods in the 24 months preceding the termination of your employment? A. Mr. Payne, not Mr. Dean.

Q. Mr. Payne, rather? A. No, there was no discussion, no discussion, in fact I asked about my record and he didn't know anything about it.

Mr. Moscovitz: All right, that is all.

RECROSS EXAMINATION: 2001

Q. (By Mr. Ransom) Do you know anything about your rating with the company for attendance and pro-

duction and the like? A. It is not quite clear, the question.

Q. Well, you were in one of the company's departments, were you not, where they have the system of rating or grading employees according to various elements going into their qualifications in their work? A. You mean their ability?

2002 *William J. Kennedy—For N.L.R.B.—Recross*

Q. Yes. A. Yes.

Q. Attendance? A. I know about the ability.

Q. Well, I assume you knew about the ability because you testified so modestly about it, but I was wondering whether you knew how the company rated you? A. Well, it was quite evident that each time there were men slated for a higher position if they had to go through an examination I would take that examination, pass the examination and get the higher position.

Q. Did you ever see your employment rating with
2003 this company? A. I had no opportunity to see anything like that.

Q. And you don't know whether your general rating was anything above fair, do you? A. If a man's rating is four, then he would not be the type of man they would get out on storm emergency; where a man has to put all he has into the job to make continuous service, where the job is decidedly risky, if a man is

S. M. 712

poor in that bureau, he should not be a first class lineman.

2004 Judge Ransom: That's all.

Examination by Trial Examiner:

Q. (By Trial Examiner Gates) Did Mr. Smith tell you the name of the company when he called you in the office on December of 1936? November or December of 1936? A. Yes.

Q. Was it a company affiliated with the Consolidated Edison Company? A. Not to my knowledge, no sir.

Q. Entirely independent? A. Yes, sir.

Judge Ransom: I don't know that there is any objection to bringing that out, it was an-

2005

other public utility in the city of New York but not a member of this group of companies, the company was the New York Dock Company, was it not?

The Witness: That is correct.

Judge Ransom: And their rate of pay for first class linemen was lower than what the Queens Company's pay for linemen helpers was.

The Witness: I believe so, yes sir.

Judge Ransom: That is all.

2006

Q. (By Trial Examiner Gates) You stated that a few days after you left the job in June that they put the linemen's gangs on a six day week and brought

S. M. 713

in, transferred, some additional men to that job; do you know how many additional men, where they got them? A. I believe some of them were transferred in from the subway bureau.

Q. How many? A. I don't know, I haven't any idea.

Q. Do you know whether they were first class linemen? A. I do not.

2007

Q. Or some other grade of linemen or helpers? A. I believe they were helpers.

Q. You don't know whether they brought in any linemen or not? A. No, sir, I don't know.

Q. At one point you referred to the foreman on some of the line trucks; they have the power to hire and fire? A. No, I don't believe so.

Q. They don't? A. Their recommendation might carry weight.

Q. There was quite a bit of testimony relative to a man named Waterhouse, I am not sure that the record is clear as to his job with the company, will

you state what it is? A. To the best of my knowledge he is the personnel manager of the New York and Queens Electric Light and Power Company, or was at that time.

Q. He was not a member of the employee representation plan? A. I believe his only connection there

S. M. 714

was a member of the negotiations committee of the management.

2009 Q. For the management? A. Yes, sir, he was not an official of the company.

Judge Ransom: He was a member of the management committee present when you had conferences with the management committee. Is that correct?

The Witness: Yes, I believe that is true.

Judge Ransom: I think I will have this employee's rating card marked for identification.

(Document referred to was marked respondent's exhibit No. 4 for identification, Witness

2010 Kennedy.)

(Witness excused.)

Trial Examiner Gates: This may be admitted, this letter.

Judge Ransom: You are referring to the letter between Mr. Wersing and Mr. Kennedy?

Trial Examiner Gates: Yes, that will be received as Board's exhibit No. 10.

(Document referred to was received in evidence marked Board's exhibit No. 10.)

Mr. Moscovitz: I will call Mr. Emler.

John F. Emler—For N.L.R.B.—Direct 2011

JOHN F. EMLER, called as witness for the National Labor Relations Board, having been duly sworn, testified as follows:

Direct Examination:

S. M. 715

Q. (By Mr. Moscovitz) What is your full name? A. John F. Emler.

Q. What is your address, Mr. Emler? A. 5883 Grand Street in Maspeth, Long Island. 2012

Q. Will you try as we go along with this testimony to keep your voice raised if possible? A. I will.

Q. Were you employed at any times by the New York and Queens Electric Company? A. I was

Q. When did you first go to work for that company? A. I think in July, 1927.

Q. And did you work for the company without interruption? A. I did.

Q. Until what period of time, until what date, rather? A. Until June 17th or 19th.

Q. June 19th, 1936? A. 1936.

Q. When you first went to work for the company, what kind of work were you employed to do? A. Well, I was employed to do clerical work in the office of the overhead bureau in Long Island City as a clerk, temporarily. 2013

Q. Your first job then was a temporary one? A. Correct.

S. M. 716

Q. As a temporary clerk, is that right? A. Yes.

Q. How much money did you get a week for that job? A. $25.00.

Q. How long did you work as a temporary clerk?

2014 A. Oh, possibly seven or eight weeks or two months, I just don't remember.

Q. And was it always $1.20 a week? A. It was until I was put out on another job.

Q. Yes. Did you, after the expiration of the weeks which you testified about, become transferred to another job? A. Yes.

Q. And what job was that? A. That of setting meters.

Q. Was that a temporary job or a permanent job?

2015 A. That was a temporary also.

Q. And what salary did you receive when you started that job? A. As near as I can remember $27.00 and some change. I don't recall, a week.

Q. How long did you work setting meters? A. Oh, probably seven or eight months or so, I am not exact on that.

Q. Possibly seven or eight months? A. Yes.

Q. And during that period of time did you receive

S. M. 717

the same rate of pay? A. No,—yes, I received the

2016 same, $27.00 a week, until I was given another assignment.

Q. Yes. And what was the next assignment that you received? A. A lineman's helper.

Q. Where was that? A. That was in Long Island City, overhead bureau at that time.

Q. And who were you assigned to help? A. Oh——

Q. First grade lineman or what? A. First grade lineman.

Q. Were you then a helper to a first grade lineman, first grade lineman? A. First grade lineman and various linemen, second and third and so on.

Q. As needed? A. As needed.

Q. And was that a temporary or a permanent assignment? A. Well, it was permanent in that respect that they gave you eight months or whatever period in school and then if you were successful in passing the test, you were graded.

Q. So that you took an examination, is that right? I mean you took a test in order to become a helper? A. Well, first whe.. I received this—or when I got this

S. M. 718

other job as helping first class linemen, I did receive 2018
an increase. That was $29.00, but from there on you have to take a test.

Q. I see. And did you then take an examination? A. I did.

Q. How long after you became a helper? A. Seven or eight months.

Q. And did you pass the examination? A. I did.

Q. Did you get a rating on your examination? A. Yes. If you pass to be first class helper, but—and then I got my check, I would say two or three weeks after the examination, I found out that I had skipped that class, and immediately received the pay of a third 2019
class lineman.

Q. So that you got a higher promotion than usual; is that it? A. That's right.

Q. And what rate of pay did you receive upon passing the examination and becoming a third grade lineman? A. $36.00 and some odd cents, but the cents I cannot remember.

Q. Do you recall when it was that you took that job? If you will give me the approximate time it will be all right, if you don't recall the exact date? A. I couldn't—I will say it was two or three days later.

Q. Which will bring you into about what period?

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S. M. 719

A. Around 1930.

Q. 1930 or 1931? A. Possibly sooner than 1930. I really don't know. I am not so positive.

Q. All right. How long did you work in that job? A. Well, as it goes, they let you work for a period, well, say, six months, but it may reach into seven or eight some times, when they send you out to school again to take another examination, and if you pass the test, why, they again give you another raise.

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Q. Is that what happened to you? A. That is what happened to me.

Q. Where is your school located, which you attended? A. At that time when I first began attending that school, it was located in Flushing. I think it is called the Central Service Station in Flushing.

Q. What is the name of the school? A. It is not a school, they just simply call it a school. They used to have a man to put you through tests and it was in this Flushing Central Service Station.

Q. And you took this other examination? A. That's right. They haven't a school there, they have a couple of poles set up in the back yard and you have to take your test there.

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Q. It is a practical test? A. Yes.

S. M. 720

Q. Did you pass that examination? A. I did.

Q. Did you then get a new rating or assignment? A. Yes, when I passed, I got another rate.

Q. What was that? A. $39.00 and some cents.

Q. Doing what kind of work? A. That of a second grade lineman.

Q. All right, and how long did you work as a sec-

2023

ond grade lineman? A. Possibly six months, maybe seven or eight, until they gave you another test.

Q. You took another examination? A. Yes.

Q. Did you pass that examination? A. I did, as I understand it.

Q. Did you get a new rating? A. No, I did not.

Q. What did you do—did you then continue at the same job? A. No, I did the duties of a first grade lineman, the rating on my vacation card stated that I was a first grade lineman receiving second grade lineman's pay.

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Q. Now, did your rating on your card change after this examination? A. It did not.

S. M. 721

Q. I see. A. You mean in money?

Q. No, I mean in classification, in title, after this last examination about which we have just been talking? A. Yes.

Q. Did you get a change on your card to a designation as first class lineman? A. Yes.

Q. I see. Then there was that change? A. That's right.

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Q. Which resulted from the examination? A. Yes.

Q. Is that right? A. That's right.

Q. But you say it also appeared on the card that you were a— A. First grade lineman.

Q. First grade lineman? A. Yes.

Q. Now, did you receive a first grade lineman's pay? A. I did not.

Q. Were you doing a first grade lineman's work? A. I was.

Q. Did you at any time after that receive the pay of a first grade lineman? A. Yes, there was a reclassi-

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S. M. 722

fication or something like that.

Q. Do you recall when that was? A. No, I do not.

Q. Was it before or after you became a member of any labor organization? A. That was after I was a member of the employees representation plan.

Q. I see. You say it was before you became a member? A. That was after.

Q. After you became a member? A. After I be-

2027 came a member of that.

Q. The employees representation plan? A. The employees representation plan.

Q. But it was before you were a member of the Brotherhood of Utility Employees. Is that right? A. I think so, I am not positive.

Q. Now, what rating did you get when you finally became a first grade—came within the first grade lineman's rating classification? A. Well, as I understand it I was rated as a first class B I think at $40.48.

Q. And did you, after receiving that classification at any time receive an increase in pay? A. I did not.

Q. So that you received the same rate of pay up

2028 to the time you were discharged, including the day of

S. M. 723

discharge? A. That's right.

Q. All right, now, at the time you went to work for the company, were you a member of any labor organization? A. I was not.

Q. Now, was your affiliation with the Employee Representation Plan your first affiliation with labor organizations while employed by this company? A. Will you please repeat that.

Q. When you joined the employee representation

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plan, that was the first labor organization that you joined in the company, is that right? A. That's correct.

Q. And were you an officer of the employee representation plan? A. I was not.

Q. Were you active in it? A. I was not.

Q. Just a member? A. Just a member.

Q. All right, and did you at any time after becoming a member of the plan become a member of the Brotherhood of Utility Employees? A. I did.

Q. Do you recall when it was? A. Yes, I think it 2030

S. M. 724

was in April of 1935.

Q. And were you at all active in securing members for that organization? A. Not that I can say, I did not get any signatures, but I was active otherwise.

Q. Did you try to get signatures? A. Tried to, yes, in telling the fellows what I thought they should do and so on.

Q. And what were these other things that you did when you say "I was active in other ways"? A. Well, after joining this Brotherhood, why I went to the dif- 2031
ferent fellows and I said that I thought that this was a good thing, an organization that we can go places with and I talked to them and I coaxed them as much as I could, and I tried to have them come over to the meetings and sign an application, join the Brotherhood.

Q. And did you spend quite some time doing that sort of thing? A. Yes.

Q. Did you do it alone or in association with other men? A. I did it alone and I did it in association with other men and in every way I could.

Q. Yes. Did you work from time to time in that activity with Mr. Wersing or Mr. Grulich? A. Well, I

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was in contact with him a whole lot, I had to be in order to go along with these activities.

S. M. 725

Q. Yes, but you were in different places, weren't you, different working places, they were in an office and you were out in the field? Is that right? A. That's right.

Q. And did you meet at any time with them evenings for the purpose of discussing your organizational

2033 activity? A. Yes, I did.

Q. And did you do that through 1935 when you were a member of this organization? A. Yes, I did.

Q. Did you at any time after becoming a member of this organization become elected to an office within it? A. Well, I was elected to what they call the executive council.

Q. When were you elected to that? A. Well, I think in September, 1935.

Q. Were you just one of the members of the Executive Council? A. No.

Q. Or were you chairman of it? A. No, I was just

2034 a member.

Q. Yes, how many members were there? A. I really don't know the amount of members that the council had at that time.

Q. What were your duties as a member of the executive council? A. Well, I didn't have very much else to do except to sit in on the meetings and listen to the

S. M. 726

council planning the membership drive and so on and after the meetings were over then we would go out and do what we had decided to do at the meetings, so far as organization was concerned.

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Q. Would the executive committee formulate policies for campaign purposes? A. Well, yes, they would, they would explain what they thought we should do, not by writing or anything like that, but what they thought we should do on the following day or days and so on.

Q. Did you ever hold any other position in your organization? A. No.

S. M. 727

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Q. What local did you belong to? A. Local 103, Brotherhood of Utility Employees.

Q. Now, during this period of time, were you also a member of the employee representation plan? A. I was.

Q. Did you ever resign from it? A. I did not.

Q. Did you continue throughout your membership in the Brotherhood of Utility Employees as an active member? A. I did.

Judge Ransom: As an active member under the plan?

Mr. Moscovitz: No, sir, as an active member of the Brotherhood of Utility Employees.

2037

A. Yes, I did.

Q. (By Mr. Moscovitz) Yes. Did you at any time then become a member of any other labor organization? A. Yes, I did.

Q. When was that? A. I became a member of the International Brotherhood of Electrical Workers in, I think, April, 1936.

Q. Yes. Did you hold office in the local? A. No.

Q. What was the local which you belonged to? A. Local B-752.

Q. Were you on any committee or committees? A.

S. M. 728

No, I was not.

Q. How long were you a member of the I.B.E.W.? A. Well, I was an active member, I think, from the time I joined until the end of the year. That was 1936, at which time I took out a withdrawal card.

Q. That was after you had been discharged? A. Oh, yes.

Q. You say that you were an active member of the local of the I.B.E.W. Was that activity the same as the
2039 activity which you have described as a member of the Brotherhood of the Utility Employees? A. Well, for a while.

Q. Did you do the same sort of thing? A. I was very active up until the time I was fired.

Q. What did you do, for instance? A. Doing the same thing, going around, explaining to the different fellows that I thought it was a very good idea of having an international organization behind us, that we could get further with that outfit than we could with the present or the previous organization before that.

Q. Yes. Were you a member of the I.B.E.W. at the
2040 time you were discharged? A. I was.

Q. What was the date of your discharge? Did you say the 19th? A. I think it was the 17th or the 18th we were called in.

S. M. 729

Q. Was that the same time Mr. Kennedy was discharged? A. It was the same time, but I know that when we were called in we were not fired immediately. It took two or three days, that is why I am not positive whether it was the 17th or the 19th.

Q. Had you, during the period of time that you were

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employed by the company, been disciplined because of bad work which you had done? A. Not to my knowledge.

Q. Your employment record with the company is one which shows increases in rating up until the time of your discharge. Is that right? A. That's right.

Q. But you never received any decreases in rate; is that right? A. Yes, that was during what they called the general cut, as they call it.

Judge Ransom: That was not a change in rating.

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Q. (By Mr. Moscovitz) That was not a change in rating. It was simply a change in pay? A. Yes.

Judge Ransom: Shortening of hours and change in pay.

Q. (By Mr. Moscovitz) That was in 1933? A. I think so.

Q. And the reduction that you received in your pay

S. M. 730

at that time was given back to you at some later time. Is that right? A. Yes, I think a couple of different times.

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Q. A couple of different times? A. Yes.

Q. Had you ever been approached by your boss and told that you were doing very good work—had you ever been singled out to do special assignments? A. No, not exactly.

Q. When you say "not exactly", do you mean that you had not been singled out for special assignment work, or that you did no special assignment work? A. Not unless you would call driving a truck a special assignment. I was assigned to that at one time, driving

a truck, when they were setting three-element meters in the Queens Company, and at that time I was called upon to drive a truck which I did. I held a chauffeur's license, which was paid for by the company at that time, and I drove that truck. I don't remember just how long it was.

Q. Now, before you became a member of the I.B.E.W. you served on an emergency committee appointed by the membership of the Brotherhood of Utility Employees, did you not? A. That's right.

2045 Q. And was that the committee which took up the case of the discharges of Mr. Wersing and Mr. Grulich?

S. M. 731

A. That's right.

Q. Did you hear the testimony of Mr. Kennedy? A. I did.

Q. Did you hear him testify about that committee and its work? A. I did.

Q. You served on that committee, did you not? A. I did.

Q. Throughout? A. Throughout.

2046 Q. Yes. And were you also a member of the strike committee which was the committee composed of the members of the emergency committee? A. I was.

Q. Did you hear Mr. Kennedy's testimony regarding the activity of that committee? A. I did.

Q. Did you serve on that committee throughout? A. Yes.

Q. Until such time as it was disbanded? A. That's right.

Q. Do you have anything further to add to the testimony given by Mr. Kennedy regarding the activities of the emergency committee? A. No.

S. M. 732

Q. Do you have anything further to add to the testimony given by Mr. Kennedy regarding the activities of the strike committee? A. No, I have not.

Q. Did you at any time after becoming a member of the emergency, the strike committee, and while the strike was still in effect, have any discussion with your foremen or supervisory, or the company supervisory employees, regarding your membership in the Brotherhood of Utility Employees? A. Yes, the group, the gang, 2048
rather, I would put it, along with the foreman, I was talking to the men in my gang and the foreman was also there, he was present.

Q. Who was the foreman? A. A fellow by the name of John Langdon, or Langdonbalm, I don't know, I don't know just what name he uses, I understand that he uses two names.

Judge Ransom: Where was this and when, let's get that.

The Witness: Well, that was somewhere, I think, in Glendale, Long Island, the location I don't just remember now.

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Q. (By Mr. Moscovitz) What was the conversation, I understand this was after you became a member of the strike committee, is that right? A. No, this time that I am referring to now was after I became a member of the I.B.E.W.

S. M. 733

Q. I see, well, before you tell us about that, will you tell me whether or not you had any conversation with any superintendent or supervisory employee regarding your membership in the Brotherhood of Utility Employees? A. No, not that I can recall.

2050 *John F. Emler—For N.L.R.B.—Direct*

Q. And you say after you became a member of the I.B.E.W. you had some conversation with your foreman regarding your membership? A. Not exactly with the foreman, with the men, the foreman was present.

Q. Well, did the foreman participate in the conversation? A. Not very much, he listened in.

Q. Did he have anything to say? A. Yes, at that time he said, I think——

Judge Ransom: I object to this, he does not
2051 identify the time or the place or the man.

Q. (By Mr. Moscovitz) Well, where was it at, you have testified that it was in Glendale, Long Island? A. It was in Glendale, but I think that I will have to admit that I am mixed up on your questioning, I am not straight on it.

Mr. Moscovitz: All right.

The Witness: Because it is a different union, the other union and the I.B.E.W. union and the employees representation plan, that is why I am sort of mixed up on just exactly the time you

2052 S. M. 734

mean.

Mr. Moscovitz: All right.

The Witness: When I was there and where I was.

Q. (By Mr. Moscovitz) Now, when you became a member of the I.B.E.W., that was as a result of the reorganization of the Brotherhood of Utility Employees, is that right? A. Yes, that's right.

Q. And the Brotherhood of Utility Employees was out of the picture after you became a member of the I.B.E.W., right? A. Yes.

Q. And you were at the time you became a member of the I.B.E.W. still a member of the plan, were you not? A. Yes.

Q. Now, after you became a member of the I.B.E.W.? A. Yes.

Q. Did you have any conversation with your foreman about your membership in the I.B.E.W.? A. No, that is where I think I was mistaken, when you refer to this foreman listening in I still think we weren't in the I.B.E.W. at that time.

Q. All right, now, do you know when it was that this 2054
foreman was listening in? A. Yes, previous to that, when we were thinking of striking and when this foreman said, "I think you fellows are making a very foolish move and if you do go out on strike, the I.B.E.W. will

come in and scab on you and you will lose out altogether."

Q. That was in December, then, of 1935? A. Well, that was——

Q. While the strike vote was in existence? A. Yes, that's right, when the excitement was still on. 2055

Judge Ransom: I move to strike out the answer, it is wholly unidentified, the person is wholly unidentified, it is not shown who he was or what he was or what authority he had.

Q. (By Mr. Moscowitz) Well, was this man a foreman of your gang? A. He was.

Q. What gang was that? A. Well, they call it Langdon gang, they called the gang Langdon gang, they call it, whatever the foreman's name is, why, that is the name of the gang.

2056 Q. How did you work and how long did you work in Langdon's gang? A. Oh, it must have been, I'll say eight months or a year, something.

Q. And where were you working at the time he made that statement? A. I think it was in Glendale, Long Island, somewhere out there, I was not familiar with that section of the city, so therefore I don't know for

S. M. 736

sure.

2057 Q. Do you know what job you were working on at that time? A. No, I could not say.

Judge Ransom: Did he have power to hire and fire?

The Witness: Not that I know of.

Judge Ransom: I move to strike out the conversation.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Did you have any other conversation with any other foreman or with the superin-

2058 tendent at any time after you became a member of the I.B.E.W.? A. No.

Q. Or before you became a member of the I.B.E.W.? A. No.

Q. All right. Tell us what happened on the day of your discharge. A. Well, I was working on the job outside of Flushing, Long Island, when a man by the name of Mr. Tom Green came to the job and as I was in the cellar at the time driving out pipe for an underground service to a house and the man that works in, or he did work in that gang, as the chauffeur, he came over to the window and he says, "You are wanted outside." I came outside and the foreman, Mr. Langdon, says, "Mr.

Green wants to see you." I went over to Mr. Green. He was sitting in a Chevrolet car and he handed me this

S. M. 737

envelope and I opened it and it contained a note directed, directing me to go to the personnel bureau, Long Island City. So I immediately took off my overalls and put away my tools and my belongings and my pliers and so forth and I went down.

Q. Whom did you see? A. I saw a fellow by the name of Mr. Paine. 2060

Q. Did you have to wait to see him? Did you see him right away? A. Yes, I saw him right away.

Q. What took place when you saw him? A. Well, he said, "You are a surplus employee and the company will have to let you off, but we will also give you a chance to go over to Manhattan," he said, "just what the job is over there I couldn't tell you, but you will have to go over there yourself."

So I asked him why did this come up. I said that I didn't like the idea, I says, "I know whenever I will go over there I will be lowered down most likely, that is, my wages will be lowered." And I didn't like the idea 2061 of even going over there. In fact, I wasn't going to go over there until I was standing outside looking at this piece of paper that the man handed me and along came Mr. Kennedy and asked me what it was all about and I told him that I didn't know if I should go over there or not, but he said, "Don't be foolish. Go over and see what it is all about."

S. M. 738

But in the meantime I told Mr. Paine I didn't think it was fair for the company to treat me so dirty, and he said, "Why?" And I said, "Well, for this reason, you

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realize I was only a young man when I started here, only 27 years old, and I pretty old now, if you figure the age, and it is going to be tough on me to go out now and look for a job because I am that much older, 36 or 37 years old. That is an old man.

And he said, "Well, you don't look old. You look as if you could get a job," and I figured, what is the use of talking, after all, it is just a job with him, and after awhile I realized he wouldn't do nothing for me, and I took his advice and walked out and took the paper he

2063 gave me with the address on it for the place in New York and I waited outside and Mr. Kennedy come out in a little while, and there was another man, Mr. Baake, with him, and we all went over together.

Q. Before you tell me about going over there, will you tell me whether or not you discussed with Mr. Paine the question of seniority? A. No, I did not.

Q. Do you know whether or not—first, tell me this, how many first grade linemen were there in your division? A. Well, let me see, probably 50 or 60, I am not positive, I really don't know just the amount.

S. M. 739

2064

Q. Did you work in the same group that Mr. Kennedy did? A. No.

Q. You did not? A. I worked on another truck.

Q. Sir? A. On another truck.

Q. On another truck? A. That's right.

Q. Did you come within the same division? A. I did.

Q. There were two divisions, weren't there? A. Yes.

Q. What were they? A. One in Jamaica, one in Elmhurst.

Q. Were you in the Jamaica one? A. I was in the Elmhurst.

Q. In the Elmhurst? A. Yes.

Q. You say there might be 50 or 60 in yours? A. Yes, maybe more or less.

Q. More or less? A. Yes.

Q. Will you tell me whether or not you had worked longer or had more seniority than other first grade linemen in your division? A. That I could not say.

S. M. 740

Q. Well, did you know any men working as first grade linemen who had worked for the company a lesser period of time than you? A. I did not. 2066

Q. Do you know of any who had worked a longer period of time than you? A. Oh, yes, many of them.

Q. Do you know how many? A. No.

Q. Would you say all of them had? A. Yes, I would say they all had. I have no way of knowing.

Q. Well, do you know? A. I never asked the fellows when they were hired, so I don't know, whether they had a longer record or a shorter record, that I couldn't tell you.

Q. You couldn't say. All right. Tell me, then, what happened when you went over to this place with Mr. Kennedy? I might ask you one more question before 2067 you go into that. Were you taken from a particular job when you were discharged? A. A particular job?

Q. Yes. Was the job that you were working on a finished job, were you finished with the job or were you in the middle of a job, or what? A. We were just beginning.

S. M. 741

Q. Just beginning a job? A. Yes.

Q. What job was that, do you recall? A. Oh, I couldn't say where the job was located. As I said I was not familiar with that territory in that part of the city.

2068 Q. I say, what was the job? A. Oh, we were attempting to install service for a private dwelling.

Q. And you had just started it? A. Yes, we were just started, digging the trenches and driving the pipe and so on, that is, the gang.

Q. Do you know how long that job would have taken? A. Oh, possibly a week.

Q. Yes. And do you know whether or not another person was put in your place to do your job? A. Oh, yes.

2069 Q. Do you know who it was? A. I do not.

Q. Do you know whether or not there was an increase in the number of days worked by the men in your division after you were discharged? A. I couldn't say as to that for certain, but I can say that when I went back to get my overalls and belongings, off the truck, there was another man in my place.

S. M. 742

Q. Had you ever seen him before? A. I did not. I don't know where he came from and didn't ask.

2070 Q. So far as you know he was a new man? A. To me he was, I don't know where he came from.

Q. What happened when you went over to this other place with Mr. Kennedy after you left Mr. Payne's office? A. Well, we met a fellow that I really couldn't say now if I remember his name. I think it was Anderson. I think it was, I am not positive.

Q. Where was he? A. Down at #4 Irving Place.

Q. Is that the company's office? A. Yes.

Q. Did you see him? A. I did.

Q. Was he alone or was he with Mr. Kennedy? A. Well, the first day we sat and waited there all afternoon and they told us that this fellow wasn't there or some-

thing like that, but that we were to go and come back the next day.

Q. Did you go back the next day? A. Yes, we went back the next day.

Q. Did you work some more? A. Yes.

S. M. 743

Q. Or did you see him? A. No. We waited some more.

Q. You and Mr. Kennedy? A. Myself and Kennedy and a fellow by the name of Bakke. 2072

Q. Did you finally see the man you were supposed to see? A. Yes, Kennedy saw him and I saw him.

Q. Who was that? A. I think the man's name was Stohl. I am not positive.

Q. Do you know what his job is with the company? A. I do not.

Q. Is he a personnel man? A. I couldn't say.

Q. Do you know what floor he is on in the company's office? A. I am positive he was in the building, but I don't know what floor.

Q. Was he the man that you were sent to see? A. Well, this man Anderson I think it was sent us up. I 2073 think it was to see him.

Q. Well, did Mr. Payne send you to see him? A. Not to see him, he didn't mention that name.

Q. He did not mention any name, is that it? A. Well, he may have but I could not remember just whose it was.

Q. All right, what took place when you saw him? A. Well, when I went in this fellow asked me what experi-

S. M. 744

ence I had on switch boards.

2074

Q. Switch boards? A. Switch boards and circuit breakers.

Q. What do you mean switchboards, being a switchboard operator? A. Switchboard work, I don't know what that is, I couldn't tell you.

Judge Ransom: He doesn't mean an operator.

Mr. Moscovitz: Yes.

The Witness: It is a switchboard, switchboard work, circuit breakers, installing circuit breakers and different things like that and I said I was not, I said I had been a lineman as far as I had gone and I don't know anything about that kind of work.

2075

Q. What did he say? A. Well, he said, he mentioned something about helpers, or something like that, that there was a terrible lot of helpers came over there and that he had put to work and he said he did not even have a helper's job and therefore he had nothing then to offer me because I could not do switchboard work, circuit breaker work, et cetera. He was filled with helpers and he could not offer me nothing, so there was nothing left for me to do but go back to Long Island City and then be laid off, fired.

2076

Q. Did you go back? A. Yes.

S. M. 745

Q. Who did you see? A. Mr. Payne.

Q. What did you report to him? A. There wasn't much, I just told him that we did not make out over there and we came back for our money, and he gave us our checks when we turned in our identification card and that was all there was to that.

Q. Had you ever worked on any of the jobs that this man offered or discussed with you when you went out

to see him at Irving Place, had you ever done that kind of work? A. No, I did not do that kind of work.

Q. You didn't know anything about it, did you? A. I didn't know the first thing about it.

Q. Did you ever do work of that sort? A. He asked me if I knew how to do it.

Q. Was it temporary work or permanent work? A. Well, I am not positive whether he said it was permanent or what it was at that time.

Q. Did Mr. Payne have anything to say to you at all when you got back? A. No, not anything that I recall 2078
now, I don't remember.

Q. And is that the last day then that you worked for the company? A. That's right.

S. M. 746

Q. And how long were you out of work, for any period of time after that? A. Yes, up until, I think it was, September. As it was stated here before Mr. Kennedy called up the local and they in turn called up a man by the name of Michael Wagner and he in turn came down to my home from where he lived in Maspeth and he told me to go down to Long Lsland City, it concerned a job. 2079

Q. All right, now, you say that was in September? A. I think it was, I am not sure.

Q. 1936, is that right? A. Yes.

Q. Now, between the time that you were discharged and September of 1936 did you have employment elsewhere? A. No.

Q. Now, to whom did you report in September? About this job that Mr. Kennedy testified about? A. Mr. Smith.

Q. Mr. Smith? A. I think Mr. N. B. Smith.

Q. Where did you see Mr. Smith? A. The personnel bureau, I think, in Long Island City.

2080 Q. That is the New York and Queens? A. The New York and Queens Electric Light.

Q. What did Mr. Smith tell you? A. He told me that

S. M. 747

the New York Dock Company had called him up and told him that they needed some linemen, that if he knew of any, to send them over, and he said he thought of us fellows that were laid off and he called up Kennedy and he did not ask me how I came down there or anything,
2081 he just said, "Would you accept a job?"

I said, "Well, as I am not working, and I have a wife and a couple of kids, and I could use the money, and so therefore I will accept the job."

He said, "Do you think you can qualify for it?"

I said, "I think so, sir."

He said, "All right, if you qualify for the job, you will receive 75 cents an hour, 40 hour week, which would mean $33.00 a week", and he then further stated that, "You can readily appreciate the embarrassing position it would put this company into if and when you receive, if you get that job over there, and started any
2082 funny business over there."

I did not answer him on that, I did not say aye, yes or no, that was the end of that, and then I went over and I qualified for the job and I accepted the job and I still have that job over there with that company.

Q. At that rate of pay? A. No, it means a little more right now, we had a raise since that time.

Q. When did you get the raise? A. Oh, about four

S. M. 748

weeks ago, I think.

Q. What are you getting now? A. Well, when we

signed a petition for some more money, why they gave us, they stretched the week, they made it a 44 hour week, which meant going to work Saturday a half a day and we also asked for time and a half overtime and an increase in the hourly rate and they gave us the added. they added the time to the week which meant 44 hours and it was at 5 cents an hour increase, and they did give us time and a half for overtime, which means I get $35.20 a week for a 44 hour week over there now.

Q. What company is that? A. New York Dock Company, I think it is, 360 Furman Street, or something like 2084
that, 334, I don't know, it is one of the two, they could be reached by both addresses.

Q. Is your employment there temporary or permanent, do you know? A. As I understand it is permanent.

Q. Are you desirous of going back to work for this company? A. Yes.

Mr. Moscovitz: That's all.

Trial Examiner Gates: We will recess until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken at 5:00 o'clock P.M., June 15th, until 10:00 A.M., June 2085
16th.)

2086

Minutes of Hearing, Held June 16, 1937

S. M. 749

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER

of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated companies,

2087

BROOKLYN EDISON COMPANY, INC.,
NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY,
WESTCHESTER LIGHTING COMPANY,
THE YONKERS ELECTRIC LIGHT AND POWER COMPANY,
NEW YORK STEAM CORPORATION,
CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY,
Respondents,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.

2088

Case No. 11-C 224

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14 Vesey Street,
New York City, N. Y.,
June 16, 1937.

The above-entitled matter came on for hearing pursuant to adjournment taken June 15, 1937, at 10:00 o'clock A. M.

Before:

ROBERT M. GATES, Trial Examiner.

2089

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National

S. M. 750

Labor Relations Board.

WILL MASLOW, Esq., Attorney for the National Labor Relations Board.

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United 2090
Electrical and Radio Workers, Local 1212.

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City, N. Y. (By William L. Ransom, Jacob H. Goetz, and Pincus M. Berkson, of counsel), appearing specially for the respondent companies, reserving all objections to jurisdiction.

S. M. 751

PROCEEDINGS

Trial Examiner Gates: The hearing will come to 2091
order, please.

JOHN F. EMLER, resumed the stand.

Cross Examination:

Q. (By Mr. Ransom) Where did you work before you came to the New York & Queens Electric Light & Power Company, what were your previous jobs? A. As near as I can remember, I think it was the Ferguson Construction Company or the Conkin Construction Company, I think that is it.

2092 Q. You did work for the Ferguson Construction Company in Cleveland? A. Cleveland, Ohio.

Q. In what capacity? A. Well, a laborer, in the building trade.

Q. What happened to that job? A. Well, as a rule, when they finished the job you were laid off.

Q. Were you laid off? A. I was.

Q. Then you went to work for the Conkin & Conkin Construction Company? A. I don't remember.

2093 S. M. 752

Q. You don't remember? A. No, I know I worked for those two, whether it was after that or before that, I couldn't say.

Q. Well, were you laid off of that job, too? A. Yes, sir.

Q. Before that, you had been a farmer? A. That's right.

Q. As a member of the executive committee or executive council of the Brotherhood, you were active in these various matters to which you have testified and to which others have testified? A. I was.

2094 Q. Your name was from time to time published in the newspapers as a member of the executive committee of the Brotherhood? A. I think it was mentioned in the public newspapers at one time that I remember.

Q. And also appeared in the leaflets and magazines gotten out by the Brotherhood? A. I don't remember it having occurred in leaflets, it may have been in The Live Wire or one of those publications of the union.

Q. What about The Tower Man? A. I don't think my name was ever in that, that I know of.

Q. You wouldn't say that it wasn't published from time to time in The Live Wire? A. It could have been, yes.

S. M. 753

Q. Now, when you had this conversation in the personnel bureau about going over to Manhattan to see whether there was work on which you could be used there, you went over with Mr. Kennedy? A. Yes, and one other man, William Baake.

Q. Yes, and Mr. Paine—Mr. Paine then or at any time didn't tell you that you had been discharged? A. He told me as far as it was, I could be laid off right then and there, or that I could have my choice of going over there, as I testified yesterday to see what it was about, 2096 he didn't exactly know what it was over there.

Q. But he told you that they might have a job over there if you could qualify? A. He did not.

Q. He didn't? A. No.

Q. Well, you didn't accept any, or indicate that you wanted to accept any, employment that they had in Manhattan? A. I took his advice, I took the slip, the piece of paper that he handed me and went out, and he stated that I should go.

Q. When you got over there, did you want a job in Manhattan? A. I sure did, if it was anything like my job was over there, if it paid anything like my job paid. 2097

S. M. 754

Q. Well, did you consider that any job was offered you of the kind for which you were qualified? A. There was no job offered me.

Q. Well, the job that he talked to you about, did you consider yourself qualified for it? A. I was not qualified for any of the jobs that he had mentioned, and he said that he had had enough helpers and he could not possibly put any more helpers on the job, whatever the job was.

2098 Q. When you got word to come in to see Mr. Smith about a possible job with another company, can you fix again the time about when that was? A. Well, I couldn't fix the date, but I think it was somewhere around the noon hour.

Q. Well, what month? A. I think it was in September.

Q. September, 1936? A. Yes.

Q. And Mr. Smith told you that he knew of a concern which wanted linemen? A. He did.

2099 Q. And that if you wished to do so, you could go and see whether you could qualify for the job and get it? A. He said that if I qualified for the job, that it was mine.

Q. There were jobs open? A. Yes.

S. M. 755

Q. With that concern? A. Yes, that's right.

Q. And you went and obtained the job? A. I did.

Q. You understood that you were a surplus employee and had been laid off as such; didn't you? A. Well, I could never understand how it was. I was told that. I couldn't make that out.

2100 Q. Well, you understood it too, didn't you? You understood that was the situation; didn't you? A. I did not understand it.

Q. I see. A. I was just told I was a surplus employee, but I never did understand it and I don't yet.

Well, after you had worked for the New York Dock Company for a while, you wrote Mr. Smith; didn't you? A. I did.

Q. And that was with reference to your conditions of employment with the New York Dock Company? A. Yes.

Q. And with respect to the possibility of your being put to work by the New York & Queens? A. That's right.

2101

Q. And is this your letter? (Showing witness a

S. M. 756

paper.) A. That is the letter I wrote.

Judge Ransom: I offer it in evidence.
Mr. Moscovitz: No objection.
Trial Examiner Gates: It may be admitted.

(Document referred to received in evidence and marked Respondent's Exhibit No. 5, Witness Emler.)

2102

Q. (By Judge Ransom) You were in a department in which before the termination of your employment, there was put in force the system of rating employees on their work? A. I don't understand just what you mean.

Q. Well, rating the employees according to their ability and attendance record and production and so on, their rating of their work? A. Well, if that was in existence, I didn't know about it.

Q. I see. A. I was just called upon to do certain duties, and I did them to the best of my ability.

Judge Ransom: I will ask to have marked for identification at this time the employee rating card of John F. Emler.

2103

(Document referred to was marked Respondent's Exhibit No. 6 for identification, Witness Emler.)

Q. (By Judge Ransom) Your work was in the distribution department of the company, was it not? A. Yes.

S. M. 757

Q. And in the Elmhurst Division? A. That's correct.

2104 Q. And what territory did the Elmhurst Division cover? A. Well, I couldn't speak of the territory. It took in a lot of ground.

Q. Well, did it take in Long Island City? A. It took in Long Island City.

Q. Corona? A. Corona, Maspeth.

Q. College Point? A. College Point, Ridgewood, Bayside, I think—several other towns out in the Island that I don't remember.

Q. Flushing? A. Flushing.

2105 Q. Well, it was a part of what is called, if you know, the Third Ward of the Borough of Queens or, if you don't know, never mind. A. I couldn't say.

Q. But your work was in the distribution department in that area? A. That's correct.

Q. And I think you said that at or about the time of your discharge or lay-off you had been engaged in installing services on consumers' premises? A. That is correct.

Q. And that was a regular part of your work as line-

S. M. 758

2106 man? A. Well, as a lineman that was not part of our work but, we, as linemen, were considered that we had to do that kind of work when they asked us to do it.

Q. And that involved the putting in of the electric wires in connection with either an underground or an overhead connection for the street lines into consumers' premises? A. Yes, digging trenches and driving in pipes, after the completion of that, pulled in the services, splice them, "E" boxes and "R" boxes, junction boxes in the cellars, etc., and taking down of services, overhead services, rather, on the underground connections were completed.

2107

Q. And that was the type of work you were doing at the time? A. That's what I was doing, I think that was new work, I think new dwellings were being built.

Q. And you were doing that kind of work in, did you say, the Glendale region? A. Somewhere in the Glendale locality, well, Glendale, Ridgewood, all over, I think at that time we were out in the outskirts of Flushing.

Q. But you were doing that type of work? A. On that.

Q. On new residences that had been recently constructed? A. At the time of my discharge, yes.

2108

Judge Ransom: That's all.

Trial Examiner Gates: That's all.

(Witness excused.)

S. M. 759

Mr. Moscovitz: I will call Mr. Wagner.

MICHAEL A. WAGNER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

2109

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. 6050—65th St., Maspeth.

Q. Long Island? A. Long Island.

Q. Were you at one time employed by the Consolidated Edison System? A. I was.

Q. What company? A. New York & Queens Electric Light & Power.

Q. When did you first go to work for that company? A. July 23, 1929.

2110 Q. In what capacity? A. First rate clerk, I started.

Q. Where was the office? A. Long Island City, Bridge Plaza.

Q. What was your salary? A. $27.

Q. How many hours a week? A. 38.

Q. How long did you work at that job? A. You mean

S. M. 760

the job that I started in as?

Q. Yes. A. About a year, I should say.

2111 Q. During that year's time, did you have any increases in pay? A. Yes.

Q. When did you get an increase? A. Around February, 1930.

Q. In what amount? A. $2.00.

Q. And at the end of the year on the job that you first started on, were you transferred or promoted to a different job? A. Merely assigned new work.

Q. Did you get a new classification? A. No.

Q. A new title? A. No.

Q. The same title? A. Yes.

Q. What was the new assignment work? A. It was

2112 different accounting work.

Q. And did that bring with it more money? A. No.

Q. The same amount? A. That's right.

S. M. 761

Q. What was this accounting work that you were doing? A. I prepared the authorized fixed capital expenditure report.

Q. Were you the only person in your department who worked on that report? A. Yes, that is in the figures.

Q. You did the full compilation, is that correct? A. Yes.

Q. Who had been doing that work before you? A. You want the name?

Q. Yes. A. Herbert J. Roedel.

Q. What happened to him? A. He left the company and went to the police department.

Q. Do you know how long he had been doing that work? A. Approximately a year.

Q. And was there a breaking-in period before you were permitted to assume those new duties under that new assignment? A. Yes.

2114

Q. How long did you break in? A. It wasn't exactly a period. That was a full monthly report, and from month to month I participated in the preparation of it.

Q. When you say "month to month," you participated in the preparation of it, you mean after you assumed your new responsibilities? A. No, before.

S. M. 762

Q. While doing that, you were being broken in, is that it? A. That's correct.

Q. And after being broken in and assuming the new responsibility, you then worked upon it alone in the compilation. Is that correct? A. That is correct.

2115

Q. Did you find that that took up your full month's time? A. No.

Q. What was your other duties? A. Participated in what we term the clearance.

Q. What was that? A. The compiling of monthly figures and fixed capital and retirement.

Q. And anything else? A. Well, those two took up most of my time. I don't know if you are referring just to the first year, now, that I am with the company, or throughout the— A. No, I am just referring now to the period immediately after you got this new assignment which you said took place one year after you started. Is that right? A. Right.

Q. How long were you engaged in that work? A. About two years.

S. M. 763

Q. Yes. And during that period of time, did your title remain the same? A. It did.

Q. And did your salary remain the same? A. No, I received an increase.

Q. When did you get the next increase? A. About March, 1931.

2117 Q. That was in what amount? A. $3.

Q. So that your salary at that time was what? A. $32.

Q. And during that two-year period, you were doing the same work as you have already described, is that right? A. Yes.

Q. And you assumed no other duties during that period of time other than those described by you; is that right? A. With a possible additional report.

Q. I see, but nothing of any permanency? A. No.

Q. Now, after the expiration of those two years, did you get a change in title? A. After those two years, yes, I received the title of Accounting Assistant.

2118 Q. Now, was that your next step in the employ of the company? A. Yes.

S. M. 764

Q. And was that in the nature of a promotion; do you know? A. Well, it was in the nature of a monetary promotion, but not in duties.

Q. Was it a reclassification which resulted in more money? A. It was—not the $3. one.

Q. Well, which one are you now referring to? A. The $3. one, that brought me up to $32.

Q. You have already testified about that? A. Yes.

2119

Q. Now, after that, did you receive another increase? A. Yes, I received an increase of $3.83 per week accompanied with 16 weeks' back pay, totaling $61.28.

Q. When was that? A. That was, I received that in November of 1934.

Q. And what was the back pay for? A. Well, during, or about July 15th, there was a reclassification of titles.

Q. 1933? A. 1934.

Q. All right. A. And I was omitted from that reclassification as of July 15th, and in November, 1934, they evidently decided that I was overlooked or something like 2120
that, and they changed my title to that of Accounting Assistant, first grade, together with this 16 weeks' back pay.

S. M. 765

Q. Now, at that time what was your title? A. Accounting Assistant, first grade.

Q. Well, you say that brought with it no new assumption of responsibilities? A. Not at that time, but prior to that my work was assigned to preparing the Public Service Commission report.

Q. When was that? A. That was, oh, I should judge, about six months before I received the reclassification. 2121

Q. And what was that particular job? A. Well, that particular work involved the preparation of expenditures affixed capital and the retirement of fixed capital throughout the company and it was a monthly report that I prepared.

Q. Did you continue doing that during the period of time that you were employed by the company? A. I did.

Q. And that monthly report went along with the other work that you have already described? A. The fixed capital, the authorized fixed capital report was assigned to some one else.

2122 Q. I see, and this, then, took up practically all of your time, is that right? A. Except for the clearance.

Judge Ransom: Except what?

S. M. 766

Mr. Moscovitz: For the clearance.

Judge Ransom: All right.

The Witness: And some special reports that were assigned to me from time to time.

2123 Q. (By Mr. Moscovitz) Did you work on that job alone? A. I did.

Q. And did you have to go through a breaking-in period before you were permitted to assume the sole responsibility for that job? A. Similar to the other case, yes.

Q. How long was the breaking-in period? A. Oh, I should judge about two or three months.

Q. How long did you work on that job? A. Until I was laid off, which was a period of about three or four years.

Q. When was the date when you last worked for the
2124 company? A. November 29, 1935.

Q. And were there any other duties that you assumed during that period of time up to the date of your discharge, or up to the date that you were last employed by the company? A. No other duties except what I outlined.

Q. All right, and were there any other increases in salary? A. No.

Q. So that when you were last employed you were receiving what? A. $34.50.

S. M. 767

Q. And was that for the same number of hours that you have already stated? A. No.

Q. What were the hours? A. 35 hours.

Q. Did you, during the period of time that you were employed by the company, ever do special work for the company in addition to regular duties that you have described? A. Yes, I did, on one occasion I accompanied the chief of the bureau to the Brooklyn Edison Company for the purposes of consultation over the fixed, authorized fixed capital, and expenditure report.

Q. Can you fix that time? A. About 1932.

Q. Was that an assignment which you handled once, or did you do the same thing any other time? A. At other 2126
times I was sent over to the New York Edison Company, at that time I went alone for the purpose of ascertaining the treatment that they made on the account 7-99, unfinished construction.

Q. When was that? A. About six months before I was laid off.

Q. Yes, and at whose request did you do that? A. Mr. Merton's.

S. M. 768

Q. Who is he? A. Chief of the Work Orders, incidentally, his title then was changed to Accountant in the 2127
bureau.

Q. Is he your supervisor? A. He was one of my supervisors.

Q. Do you remember his first name? A. John R.

Q. Who were your other supervisors? A. Well, at the date of the termination?

Q. That's right. A. My immediate supervisor was Joseph O'Brien, who was my clerk in charge; then above him was Henry Eller, chief of the division, and then Mr. Mehrtens, then Mr. Hausenbauer, in charge of the department.

2128 Q. Were there any other special assignments handled by you in the six months' period preceding the date you were last employed by the company? A. I am not exactly sure of the date, but I believe this may come under it. At the time that the New York & Queens Electric Light & Power Company was negotiating for what I believed to be a $25,000,000. loan, I was requested to participate in the preparation of the compilation of a report to determine the exactness of the unfinished construction account, 7-99. That was because of my ability and experi-
2129 ence with the treatment and recording of fixed capital expenditures and retirements.

S. M. 769

Q. Did you work on that? A. I participated in that, yes.

Q. For how long? A. That involved about four days. That was a special report and necessitated working overtime one or two nights.

Q. Did that fall within the six months' period that I asked you about? A. I cannot definitely say.

Q. Around that period? A. Around that time.

2130 Q. Were there any other special jobs that you can recall? A. I don't recall any off-hand.

Q. When you were last employed by the company, Mr. Wagner, were you married? A. No.

Q. Were you by any chance the head of a family? A. Yes, I was.

Q. A family of how many? A. Just my mother.

Q. During that employment period, had you ever been demoted in any respect? A. No.

Q. Or called in before your supervisor or any other supervisory employee for discipline? A. No.

Q. Have you ever been laid off? A. No.

Q. Have you ever been discharged for any reason? A. No.

Q. During that same period, had you ever been called before your supervisor or any other supervisory employee and commended for any job or jobs that you were or had been working on? A. Yes.

Q. If you will give us the names and the time. A. I was recommended by Mr. Hausenbauer to the then secretary, Mr. Malone, to assume the supervision of a newly-created division because of taking in the Hollerith Machines, tabulating machines. 2132

Q. When was that? A. That was about 1932.

Q. And what was the new department? A. I don't recall what the heading of the division was.

Q. Who was Mr. Hausenbauer? A. He is now, to the best of my knowledge, auditor of the New York & Queens Electric Light & Power Company.

Q. What was he there? A. He was the accountant of the bureau.

Q. When you say the accountant, do you mean the accountant? A. The man in charge, in charge of the en- 2133

tire bureau.

Q. In charge of how many men? A. Well, I should say about 75 or 80 people, including women.

Q. What was the name of that bureau? A. The Fixed Capital Bureau.

Q. Yes, and that is the bureau that you worked in? A. That is correct.

Q. And the number that you have just given is the number of employees in the bureau when you were last

employed? A. I don't know exactly, or with any accurate knowledge the number of employees because his jurisdiction extended over divisions that were not in the same office, not in the same building.

Q. Were you part of that division? A. I was.

S. M. 772

Q. Even though it extended into other buildings not in the same office? A. That is right.

2135 Q. Well, how many persons were there in your Bureau in your building? A. About 40.

Q. Did you have any idea of how many there were in other buildings which came within the same Bureau? A. I guess about 35 or 40 also.

Q. All right. Now, who was Mr. Malone, to whom Mr. Hausenbauer recommended you? A. Mr. Hausenbauer recommended me to Mr. Malone who was the secretary of the New York and Queens Electric Light and Power Company.

Q. Did you see Mr. Malone? A. No, Mr. Hausenbauer made the recommendation himself.

2136 Q. And was the recommendation approved? A. No, it was not approved.

Q. Was someone else given the job? A. A woman was given the job.

Q. Were there other applicants in the field, do you know? A. No, I don't know.

Q. And the gentleman who recommended you was your immediate superior, is that right? A. Well, not my immediate, but the head of the bureau.

S. M. 773

Q. Head of the bureau? A. That's right.

Q. But it was your work that was turned in to him? A. That's right.

Q. So he was in the position to judge what kind of work you had been doing, is that right? A. That is correct.

Q. Had you received any other commendations or recommendations from other supervisory employees at any other times? A. I did not finish that one.

Q. Oh, I am sorry. A. Not only was I recommended but I was given the material on that new position that was being created, given the material and requested that I study it and look it over, which I did. I took it home and studied it and looked it over and was told that Mr. 2138
Hausenbauer, that is, he told me that he was making the recommendation, that is all that I know.

Q. All right now, are there any other incidents of recommendations by supervisory employees of the company that you recall? A. This was the recommendation made by my chief clerk who was my chief clerk when I was discharged, but it was supposed to be on the Q.T.

Q. What do you mean on the Q.T.? A. Well, I was not supposed to know anything about it so perhaps we

S. M. 774

had better leave that out, it was a proposed advancement. 2139

Q. Well, did you know about it, did you? A. I did know about it.

Q. All right. Who is your supervisor? A. Mr. Eller.

Q. What was his first name? A. Henry Eller.

Q. What was his job? A. He was chief of the work order division.

Judge Ransom: Would it be possible to fix any of these dates somewhat?

Mr. Moscovitz: Yes, I will try and fix them.

Q. (By Mr. Moscovitz) And how many men did he have under him? A. About 15.

Q. And when was it that he made—did he recommend you for a different job? A. No, he didn't make recommendations.

Q. Was he contemplating making it? A. It was not in his power to, for the final word.

Q. Well, what was— A. In other words, it came down from the accountant.

Q. What was it that he was going to do on your behalf? A. He was not going to do anything, but he did

S. M. 775

get this from the accountant.

Q. Who was the accountant? A. Mr. Merton.

Q. I see, when was that? A. That was about eight months before I was laid off.

Q. And what was it that was going on regarding you? A. Mr. Eller told me that I was being considered for an advancement to a clerk in charge of the retirement section.

Q. Was that section within your bureau? A. It was.

Q. Who was holding the job at that time? A. Mr. John J. Daley.

Q. Was Mr. Daley holding the job at the time you were last employed? A. Yes.

Q. And is that job in direct line of succession from the job that you hold? A. It can be.

Q. It can be? A. Yes.

Q. Were there any persons in line between yourself and that gentleman for that particular job or is it something that other persons too would be considered for ordinarily, do you know? A. This is just what I believe,

S. M. 776

now, I believe that there was not anyone else in line

from a standpoint of accounting, training, ability and seniority.

Judge Ransom: I move to strike out the answer as not responsive or informative, it is perfectly obvious—

Trial Examiner Gates: The motion to strike is granted.

Q. (By Mr. Moscovitz) Were there any other incidents that you can recall where you were either commended or the subject of recommendation? A. I believe 2144
that is all I can recall.

Q. Now, when you first went to work for the company, Mr. Wagner, did you belong to any labor organization? A. No.

Q. What was the first labor organization that you became a member of after going to work for the company? A. I guess the E.R.P., Employees Representation Plan.

Q. When was that, do you recall, 1934? A. Either 1933 or 1934.

Q. Did you hold any office in that plan? A. I did not.

Q. Just a member? A. Just a member. 2145

Q. Were you active or inactive as a member? A. Well, I can't say, I can't say I had an opportunity to be active except as to elections.

Q. After becoming a member of the Employees Representation Plan did you become a member at any time of

the Independent Brotherhood of Utility Employees? A. I did.

Q. Was that the next labor organization that you became affiliated with? A. Yes.

Q. Do you recall when that was? A. About April, 1934.

Q. And when you became a member of that organization, was the local of that organization already in existence, or were you one of those who formed the local? A. I was one of those who formed the local.

Q. Yes, were you one of those who worked with Mr. Wersing and Mr. Grulich in the organization of the local? A. Yes.

Q. Were you active in organizational activity? A.
2147 Yes, I was.

Q. Did you attempt to secure membership? A. I did.

Q. Did you become an officer of the local? A. Yes.

Q. Do you recall when that was? A. February, 1935.

Q. What was your office? A. Secretary-Treasurer.

S. M. 778

Q. And was that the office that you held when you were last employed by the company? A. No, it was segregated to treasurer, just treasurer, the office was segregated.

Q. Of the same local? A. That's correct.

Q. And when you say that the office was segregated to
2148 treasurer, what do you mean? A. That instead of one person holding the secretary-treasuryship, another person was elected as secretary and I was elected to serve as treasurer.

Q. Who was the other person? A. Mr. Wrench.

Q. Now, during the period of time that you were a member of the Brotherhood, that is, Utility Employees, and held office, were you continuing your activity in the organization? A. Yes.

Q. And was that activity membership securing activity? A. Yes.

Q. Any other activity? A. Attending the meetings as an officer and the different rallys, participated in the planning of the workings of the local.

Q. When was it that you say that you were laid off? A. November 29, 1935.

S. M. 779

Q. Now, between February, 1935, when you became an officer and November 19, 1935, when you were last employed by the company, did you become a member of any other labor organization? A. No.

Q. Did you resign from the employee representation plan? A. No.

Q. Did you make known by writing or by word of mouth to any officer of the company that you were an officer of the Brotherhood of Utility Employees? A. I did. 2150

Q. Do you recall when that was? A. About February or March, 1935, practically after taking office.

Q. And was that by letter? A. That was by registered letter.

Q. And to whom was that letter sent? A. Mr. Hausenbauer.

Q. What did you write Mr. Hausenbauer? A. In substance?

Q. Yes. A. That I was exercising my constitutional rights to affiliate with an independent labor union, and that I was taking this step to inform him to that effect, so that there wasn't any thought of unfair play. 2151

Q. Why did you write that letter? A. Because we,

S. M. 780

the executives, felt that the company then, after having received notice of our affiliations or membership in the union, could not deny at any time that we were members of the Independent Labor Union.

Q. You mean could not deny that they were advised of that fact? A. That's correct.

2152 *Michael A. Wagner—For N.L.R.B.—Direct*

Q. Did you have occasion, during that same period of time, to speak with any of your supervisors regarding your membership in this organization? A. No.

Q. Did you participate in any of the activities of the organization in distribution of leaflets? A. I did.

Q. And did you personally do that? A. I did.

Q. And did that distribution take place around the company property? A. It did.

Q. Was that during this same period of time, after February and before your last day of employment? A.
2153 I believe so, yes.

Q. Did you serve on any committees during that period of time? A. By virtue of being an officer, I was on the executive committee.

S. M. 781

Q. Were there any conferences before you were laid off or discharged by your organization or a committee of your organization with management regarding any particular questions? A. With what—I am sorry.

Q. With management, on any particular question? A. I am sorry, the question is a bit long. I don't follow
2154 it.

Q. Did you serve on any committee that met with the representative of management? A. No, I did not.

Q. All right. Were you, as a member of any committee, engaged in the formulation of proposed demands to be submitted to management for any particular working unit of the company's operation? A. I cannot say that I was.

Q. But, were such plans being formulated? A. I believe they were.

Q. Were you, as an officer of the local, advised of that fact? A. Yes, having been in on the executive committee meetings.

2155

Q. Yes. And were those plans being formulated at the time you were last employed by the company? A. Within a period of about six months.

Q. Yes. You mean within that six months period or

S. M. 782

six months before? A. Six months before November 29.

Q. Is that when you started the formulating process? A. Well, I don't know if it is exactly the formulating process, but we did discuss in the executive committee meetings the possibilities of presenting grievances to the management.

2156

Q. Yes. And didn't those discussions take place also during the six months period up to the day you were last employed? A. Yes.

Q. Would you tell us whether or not you received notice from anyone that you were to be laid off or discharged before November 19, 1935, or before November 29th, rather, 1935? A. No, I did not.

Q. Will you tell us what happened on that day? A. On November 29, about 3 P. M., I was told by my chief to go over to the personnel department. I went over to the personnel department, and Mr. Payne told me that he had some bad news for me. I asked him what it was. He told me that they were leaving me go, and I asked him for the reason and he told me that they were discontinuing the continuing inventory department and in order to make room for married men, they were letting me go, and I asked Mr. Payne how about the other employees who were hired after me, and he said he is not making the decision. That was all.

2157

Q. What was the department that he told you was

S. M. 783

being discontinued? A. The continuing inventory department.

2158 Q. Was that the department in which you were employed? A. No.

Q. Do you know, did he tell you, how many persons were employed in the continuing department? A. Who is the "he"?

Q. Mr. Payne. A. No, he did not.

Q. Do you know how many were? A. I have no idea.

Q. No idea at all? A. No. It covers work in Flushing, I believe, and in Long Island City.

Q. And was it your understanding that with the dis-
2159 continuance of that department, married men from that department would come to work in your department and you men, as single men, would be let out; is that right? A. In accordance with the reason given, yes.

Q. And did he enter into any discussion with you on the question of seniority? A. He did not.

Q. Did you point out to him the fact that there were persons remaining who had less seniority than you? A. I did.

Q. Do you know whether or not any of these persons

2160 remaining were married? A. I do know that some were not married.

Q. And were those some who were not married continued in the employ of the company? A. To the best of my knowledge to that date, yes.

Q. Can you give us the names of any of them? A. Yes.

Q. Will you? A. John Glose—incidentally there were only, at the time of my discharge, there were only a possible one, besides myself who held the title of accounting assistant, all those that I mentioned are probably, or were probably first grade clerks.

Q. All right. A. John Glose, Vincent McSavny—women also?

2161

Q. Yes. A. Miss Strouse.

Q. Single women are these? A. Yes, it will take me a little time to go over this.

Q. Well, can you tell me then in addition to that number that you have just given me how many others there were? A. Approximately four more.

Q. Men or women or both? A. Possibly both.

Q. Both? A. Yes.

S. M. 785

2162

Q. And these persons were single, whether male or female? A. That's correct.

Q. All of them with less seniority than you, is that right? A. That's correct.

Q. And all of them graded as clerks? A. That's correct.

Q. All persons of less seniority than yourself, is that right? A. Yes.

Q. Was there one other person who had the same ranking as you? A. I am not certain on that.

Q. Well, who was the person to whom you referred before? A. Not any one particular person but the possibility that there was one, I don't exactly remember, but 2163
certainly not more than one out of the entire bureau who had the rank of accounting assistant.

Q. You mean out of the 70 or 75 persons in the whole bureau, there may possibly have been another one with your ranking, is that it? A. That's correct.

Q. But you don't know, is that it? A. I don't know.

Q. Have you ever met anyone who had the same ranking that you had in your bureau? A. No.

S. M. 786

Q. All right. Do you know whether or not anyone was put in your job? A. I do not.

2164 *Michael A. Wagner—For N.L.R.B.—Direct*

Q. You do know, however, that some one would have to take the job to carry on the work of the department, don't you? A. That is correct.

Q. And you have not learned who it was? A. I have not.

Q. All right, do you know whether or not new persons have been employed in your bureau since you were last employed? A. I do not know.

Q. Do you know whether or not this department that Mr. Payne said was going to be discontinued was dis-
2165 continued? A. It is not discontinued.

Q. Did you then leave Mr. Payne's office? A. I did.

Q. You took steps to secure reinstatement through a committee? A. Through the union, yes.

Q. And that was by a committee composed of Mr.— A. Mr. Kennedy, Mr. Emler, Mr. Young, I don't recall any more on it.

Q. And that was the last that you were employed by the company, is that right? A. That's correct.

Q. And are you working elsewhere at the present

S. M. 787

2166 time? A. I am.

Q. How long were you out of employment? A. About a year and a half.

Q. And when did you get the job that you now hold? A. May 13, 1937.

Q. Is that the first job you have had since you were let out of Queens? A. No, I worked for ten days in the railway mail division of the post office department, Christmas.

Q. How much did you receive for that work? A. Approximately $60.00.

Q. And this job that you are holding now, which you

have held since the date given, how much are you getting a week? A. $17.00.

Q. How many hours do you work a week? A. Approximately 50.

Q. You are still employed, is that right? A. I am.

Q. Who is your employer? A. Cascade Laundry.

Q. Where is that located? A. Myrtle Avenue and Marcy, Brooklyn, New York.

Q. And are you desirous of going back to work for this company? A. I am.

2168

Mr. Moscovitz: That's all.

S. M. 788

CROSS EXAMINATION:

Q. (By Judge Ransom) How old were you at the time your employment was terminated? A. 29.

Q. Your work was only for the New York and Queens Electric Light and Power Company? A. Yes.

Q. And where was the office where your work was done? A. I am sorry, I did not hear you.

Q. Where was the office at which your work was done? A. Bridge Plaza, Long Island City. 2169

Q. And all your work in one relationship or another related to the fixed capital records? A. That is correct.

Q. Now, fixed capital records, am I right in saying, are the accounting records kept by the company at its office to record the costs of the various classes of property in active use? A. That is correct.

Q. And did your work relate to fixed capital records generally, that is, as to all classes of fixed capital, or to some particular phases of fixed capital? A. Particularly to the increase of fixed capital, of the distribution end, but occasionally on different reports I had to refer to all fixed capital.

2170 *Michael A. Wagner—For N.L.R.B.—Cross*

S. M. 789

Q. The matters that you really were recording, were the changes in the distribution properties, were they not? A. Yes.

Q. For example, property was placed in use, and you recorded its original cost to the company? A. I participated in that, yes.

Q. On the property placed in use of the distribution lines in the part of the Borough of Queens, which the company served? A. That's right.

2171 Q. And then, when any of that property, for any reason, went out of use, the original cost of that property, which had been a part of the fixed capital of the company, had to be written out? A. Had to be retired, that's right.

Q. And in taking it out, you made a record of the original unit cost of the property and took into account any salvage or dismantling cost? A. Not me, personally.

Q. Well, in your Bureau? A. That's right.

Q. Were you concerned only with the— A. Installation.

Q. Installation costs? A. That's right.

2172 Q. The cost at which it had gone into the fixed capital

S. M. 790

at the time it had been locally installed on the lines? A. That's right.

Q. Now, you spoke of a time as of which you came to work on the reports of the company through the Public Service Commission of the State of New York, when was that? A. That, as near as I can remember, I don't know the exact time—

Q. Well, approximately. A. About 1934, or possibly '33.

Q. Now, those reports are annual reports to the Commission? A. No, monthly reports.

Q. Your work did not relate to annual reports? A. Not my work, no.

Q. Under orders made by the Commission, the company has to file with the Commission monthly reports of additions to and retirements from fixed capital? A. That is correct.

Q. And your work was upon those reports? A. That is correct.

Q. Now, from this time which you have indicated, 2174
down to the time at which your employment was terminated, was your work upon those monthly reports to the Commission as to fixed capital? A. Not my time exclusively, but I did exclusively prepare the P.S.C. reports.

S. M. 791

Q. And in addition to that you did the type of work which you have spoken of in connection with the fixed capital records? A. Yes.

Q. Those reports to the Commission on additions to and withdrawals from fixed capital, those monthly re- 2175
ports were made in pursuance of orders of the Commission in cases in which securities had been authorized? A. No.

Q. You don't know? A. Not, in connection where securities had been authorized. That is, as far as I can recall, a report that has been prepared monthly for several years. It is not in connection only with securities, as far as I know.

Q. Now, you don't know whether the fact is that they are required under some order of the Commission, do you know that? A. Yes.

2176 *Michael A. Wagner—For N.L.R.B.—Cross*

Q. You are not able to state to the Board what the nature of these orders are except that as one of their terms they require a monthly statement of the amount of additions to and withdrawals from fixed capital to be filed with the Commission? A. Yes; I do, minus the security part.

Q. Well, leaving out the question of what the Commission's order were, do you know that there were orders

S. M. 792

2177 which required such monthly reports to be filed? A. I have not seen it, I never saw the orders.

Q. But you know there were orders? A. Well, if the company prepared it, evidently there were.

Q. How many members with dues paid up did the Brotherhood of Utility Employees have at the time you became secretary-treasurer? A. At the time I became secretary-treasurer?

Q. Secretary-treasurer—paid up dues? A. I don't remember.

Q. I am referring now, of course, to your local of which you were secretary-treasurer, why does it take you

2178 so long to state that? A. Because I am trying to get the time from the time that we created the union and this is February 16 that I am trying to go back to, to the time that we had the election of officers and then from February 16, that is the time that I am trying to place the approximate membership—I don't exactly offhand know. I would say about 150.

Q. How many members with dues paid up did the local Union of the Brotherhood have at the time you ceased to be treasurer? A. I don't know that.

Q. You were—are you able to give the Board any idea? A. I am unable to give the Board any idea be-

S. M. 793

cause of merely holding office at the time I terminated my office with the union which was in 1936 and I was not quite as active as I was before.

Q. When did you cease to be treasurer? A. In 1936, December.

Q. Are you able to state then how many members were paid up and in good standing, how many members the local union had at the time, let us say? A. A little louder please.

Q. How many members did the local union have at the 2180
end of 1935? A. I guess about two and a quarter or two and a half, I am sorry I can't—

Q. You mean two hundred and twenty-five or two hundred and fifty? A. Yes, I am sorry I can't be specific about the number.

Q. The amount of work which was involved in the preparation of these reports and records of fixed capital varied, did it not, with the amount of construction work that was going on? A. I am sorry, you will have to repeat that.

Q. I say, the amount of work that was involved in making up the reports of records of fixed capital varied 2181
with the amount of construction work that was going on?

S. M. 794

A. Hardly.

Q. The question whether construction was active or had fallen off had nothing to do with the volume of work involved in these reports, is that your statement? A. That is correct.

Judge Ransom: That is all.

2182 *Michael A. Wagner—For N.L.R.B.—Redirect*

Examination by Trial Examiner:

Q. (By Trial Examiner Gates) How much money have you made since you ceased working? A. About 112.00 since I ceased, did you say?

Q. Yes. A. About $112.00.

Q. Altogether you made that, since November 25, 1935? A. That is correct.

Q. That's your total income from all sources? A. Total income, yes, I guess it may be a little less or a little more.

2183 Q. How much? A. Well, certainly not more than $50.00.

Q. Either way? A. Either way.

Mr. Moscovitz: I understood your testimony to be that you got $60.00 from the post office department, is that correct?

The Witness: That's right.

S. M. 795

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) What date did you go to work?

2184 A. May 13.

Q. 1937? A. 1937.

Q. Then you got $17.00 a week there? A. That is right.

Q. You got $17.00 a week from that date to this date? A. That is correct.

Q. There has been no other income? A. I have an account where I get $5.00 a month.

Q. Well, is that a savings account? A. No, that is accounting.

Q. Accounting? A. I get $5.00 a month.

Q. When did you start getting that? A. Well, I guess that was about 1930 or '32.

Q. So that you have gotten that $5.00 a month since the last day you were employed? A. Yes.

Q. By the company? A. Yes, and prior to it.

Q. You got it prior but you certainly have continued getting it since November 29, 1935? A. That's correct.

S. M. 796

Q. And you still get it? A. That's right.

Q. And that's the only other income? A. That's all.

Mr. Moscovitz: That's all. 2186

Trial Examiner Gates: That's all.

(Witness excused.)

Trial Examiner Gates: We will take a short recess.

(Whereupon a short recess was taken.)

After Recess.

GUSTA HARDING, called as a witness for the National Labor Relations Board, being first duly sworn, 2187 testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) What is your name? A. Gusta Harding.

Q. Where do you live? A. 185 Prospect Place, Brooklyn.

Q. By whom are you employed at the present time? A. Consolidated Edison Company, Hellgate Station.

Q. Where is the Hellgate Station? A. 134th Street and Locust Avenue, the Bronx.

2188 *Gusta Harding—For N.L.R.B.—Direct*

Q. What kind of work do you do there? A. Station mechanic work.

Q. How long have you been working for the company? A. Since May, 1927.

S. M. 797

Q. You are still in the employ of that company, aren't you? A. Yes.

Q. Are you a member of any labor organization at the present time? A. Local 1212 C.I.O.

2189 Judge Ransom: Will you keep your voice up? I cannot hear you at all.

Q. (By Mr. Moscovitz) Is that Local 1212 of the United Electrical and Radio Workers? A. Yes.

Q. How long have you been a member of that local? A. Since its affiliation with the C.I.O., which was March 19th of this year. Before that I joined the I.B.E.W., known as Local B-752, approximately December of 1936.

Q. And you were in the I.B.E.W. at the time it went into the United Electrical Workers, is that right? A. That's right.

2190 Judge Ransom: You mean when this local did?

Mr. Moscovitz: Yes, when the local did.

A. Right.

Q. (By Mr. Moscovitz) After the local went into the United Electrical Radio Workers were you approached by anyone in your plant who requested you to change your labor organization membership?

Q. I was requested to sign the I.B.E.W. card? A. On

S. M. 798

April 26th.

Q. Where was that at? A. At Hellgate Station.

Q. While you were at work? A. Yes.

Q. By whom? A. By the assistant chief, Robert Armstrong.

Judge Ransom: Who?

The Witness: Assistant chief engineer.

Q. (By Mr. Moscovitz) Robert Armstrong? A. Right.

Q. Is he your boss? A. He is practically head of the station under the chief engineer and superintendent.

Q. First there is a chief engineer? A. First there is a 2192
superintendent.

Q. Who is that? A. His name at that time—it has been changed. Mr. H. Hall.

Q. Hall? A. The present name of the new superintendent, transferred there about, I would say, approximately one or two weeks, by the name of Mr. Wheeler.

Q. Yes. Now at the time Mr. Hall was superintendent, who was the chief engineer? A. Mr. Dan Murphy.

S. M. 799

Q. He was next in command, is that right? A. Yes.

Q. Then Mr. Armstrong? A. Mr. Robert Armstrong, 2193
yes, sir.

Q. Was the next, is that right? A. Yes.

Q. Then who was next? A. My immediate boss was Mr. A. F. Anderson, machine shop foreman.

Q. And was Mr. Anderson under Mr. Armstrong? A. Yes, sir.

Q. I see. Was this in the morning or in the afternoon of that day? A. In the afternoon.

Q. Were you at your machine? A. I was at my work, yes, sir.

Q. At your work? A. Yes, sir.

Q. Were you approached by Mr. Armstrong? A. A

man was sent down for me to go up to the machine shop foreman's office. Mr. Armstrong wanted to see me there.

Q. Who was the man that was sent down? A. I don't recollect, one of the men in the shop.

Q. Did you leave your work? A. Yes, sir.

S. M. 800

Q. What is your work? A. I am employed as a station mechanic, second-grade, my work consists in electrical acetylene welding.

2195 Q. Did you go into the office? A. Yes, sir.

Q. Is that upstairs? A. It is on the third floor.

Q. Whose office did you say it was? A. Machine shop foreman's office.

Q. What was his name? A. Machine shop foreman's name is A. F. Anderson.

Q. And was Mr. Anderson there? A. No, sir, it was his day off.

Q. Who was there? A. Mr. Robert Armstrong and Mr. Anderson's assistant, John Eagan.

Q. What is John Eagan's job? A. Mr. John Eagan's job is to take charge of the machine shop men while Mr.

2196 Anderson has his days off.

Q. How many men are employed in the Hellgate station? A. Approximately, to my knowledge, 700 or 750.

Q. What happens in that station, what do you do in that station; what is made? A. Generating electric current.

S. M. 801

Q. Yes. And when you went into the office and Mr. Armstrong and this other gentlemen were there, did you know what was going to happen, did you know what you were going up there for? A. I had an understanding.

Q. What do you mean you had an understanding? A.

2197

I had an understanding from the rumors that were going around that we were supposed to sign the I.B.E.W. cards.

Judge Ransom: Move to strike out the answer.
Trial Examiner Gates: It may stand.
Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What happened then when you went in? A. Mr. Armstrong put the card in front of me and said, "Sign this!"

I said, "Do I have to?"

2198

Q. What was the card? A. The I.B.E.W. card.

Q. Was it— A. The yellow card.

Q. Is it a card exactly like Board's Exhibit No. 6 (handing witness Board's Exhibit No. 6)? A. Yes.

Q. Will you hold it for a second? And when he handed you this card, do you know whether or not—well, did you see any other cards like it? A. Yes, he had a

S. M. 802

stack of cards on his desk.

Q. On his desk there? A. On the machine shop foreman's desk at the office where he was at.

2199

Q. And when you say a stack of cards, approximately how many do you mean? A. Well, I couldn't judge approximately how many.

Q. How high a stack? A. Well, I didn't take specific notice how high the stack was. He had a stack of cards all spread over the desk.

Q. Had them all spread over the desk? A. Some of them were in a stack and some of them were spread over the desk.

Q. Did you take a look over at them? A. Yes, he pointed to me and I said, "Do I have to sign?" And he said, "The company wants you to sign it".

2200 Q. He said what? A. He said, "The company wants me to sign it". He said, "The company don't want the C.I.O., so you might as well sign the I.B.E.W. card".

Q. When you looked over at these other cards, did you notice whether or not any of them were signed? A. Well, he told me that practically every man had signed and I was amongst the last.

Q. Did you sign? A. I did not, that day. I told him

S. M. 803

2201 that I hope I will be the last man to sign that card, because I did not believe in it.

Q. And did you leave then? A. I left the following Thursday, that was a Monday.

Q. Did you go back to your job? A. I did.

Q. This was on a Monday, you say? A. Yes.

Q. Then what happened? A. I was off Tuesday and Wednesday.

Q. You were off Tuesday and Wednesday? A. Yes.

Q. Your days off? A. My days off.

Q. Yes. A. But before that, during that conversation, I asked him if I had to sign the card again, and he said

2202 no, but he said, "There is two roads" and he motioned with his hand, "two roads, one road going this way, and one road going that way," and he said, "You might as well follow one of these roads," and he said, "The company will be good to you so you might as well sign."

On Thursday morning, I came back to work, the 26th, I believe, the 29th. It was Mr. Armstrong's day off. I

S. M. 804

inquired in the shop if the men had signed the card, and practically all but two, to my knowledge, had signed the card.

Q. Who were the two that had not, yourself and one other? A. No.

Q. Two outside of yourself? A. Yes.

Q. I see, go ahead. A. And he referred to the assistant machine shop foreman, John Eagan, he come up to me and he started to tell me about the card, so I asked him if any discrimination—

Q. What did John Egan say to you? A. He said, he asked me how I felt about signing the card, and I told him, "Well, if the rest of them sign I guess I might as well play ball with the rest of them." 2204

Q. Was this while you were at work? A. During working hours, yes, sir.

Q. And John Egan, was he your immediate boss then? A. He was not, my immediate boss then was Mr. Anderson, he was on duty, but he also acts as an assistant to Mr. Anderson.

Q. I see. What did you say to him? A. I said, "He came up to me during working hours and talked to me back and forth about the card and pointed out to me that, well, I was approximately the only one holding out, not signing the card", so I asked him if any discrimination

 2205

was going to be made by not signing the card. Well, he says, as far as he knew he didn't know, he could not say, so from the understanding I got, well, I figured, well I might as well go up and sign the card, so I went up to Mr. Armstrong's office.

Q. Did you leave your job? A. I left my job, yes.

Q. Did you tell the foreman that you were going up, the assistant foreman? A. Yes, and he understood I was going up to Mr. Armstrong's office.

Q. What did you say to the assistant foreman before you went up, that you were going up to sign? A. Well, I said to him, I might as well sign it then.

Q. And then what? A. Then I went up to Mr. Armstrong's office and got a card, I don't know his title, a man in Mr. Armstrong's office handed me the card.

Q. Was Mr. Armstrong there then? A. No, sir.

Q. Anyone there outside of this particular man? A. No, sir.

Q. Do you remember his name? A. I believe his name was Harrison.

Q. Had you ever seen him there before? A. Yes.

2207 S. M. 806

Q. He works there regularly? A. Yes.

Q. What work does he do? A. I believe he worked as a bookkeeper, I believe, or timekeeper.

Q. Did you ask him for a card? A. He handed me the card as I came into the office, I asked him, and he said, "What are you up here for?"

I said, "About that card."

So he handed me this yellow card.

Q. Did you see the other cards there too, then? A. No, not at that time.

Q. And he just handed you one, is that right? A.

2208 Right.

Q. And then what? A. That is the last I heard of it.

Q. Did you sign the card? A. Yes, sir.

Q. And who did you give it to? A. Mr. Harrigan is the name, I called it Harrison before, it is Harrigan.

Q. The same man that acts as bookkeeper? A. Yes.

Q. Was anything else said between you? Why did you go up and sign? A. Well, if I—I believed, the rest

S. M. 807

of them had signed, I might as well fall in line with the rest of them, because I did not know whether any discrimination was going to be made on my holding out.

2209

Q. And after you signed the card, you went back to your job, didn't you? A. Yes, sir.

Q. And you continued at your job? A. Yes, sir.

Q. Can you tell me whether or not you noticed or can you tell me whether or not there were any men who appeared in your plant from time for the purpose of distributing these cards and collecting dues? A. Yes, sir.

Q. Do you know their names? A. The first man to collect the dues in the company, the janitor foreman's office, I believe his name was Idleback, he was a machinist, at the Flushing station, Waterside Station. He appeared on the company property with a sign on the door, the door was swung wide open "Pay your A.F.ofL. dues here".

2210

Q. When was that? A. That was approximately a week after we had signed the card on a Wednesday.

Q. Approximately a week after you had signed your-

S. M.-808

card? Where did you say this sign appeared? A. On the inside of the door, the door was swung open to the janitor foreman's office.

2211

Q. Who is the janitor foreman? A. The janitor foreman's office, well, the janitor foreman's name I believe is McCann.

Q. What's his job? A. His job is to look after having charge of all the building service janitors, if I am correct.

Q. I see, the head one? A. No, he has a boss over him.

Q. Who is his boss? A. Mr. Shean.

Q. What is his title, do you know? A. I believe his title is called foreman also, chief mechanic, building service, chief of the building service rather.

2212

Q. Building superintendent? A. Building superintendent is right.

Q. And is this other man in whose office this sign was hanging, is he the foreman of the janitors? A. Yes, sir.

Q. How many janitors are there? A. Oh, I couldn't fix the number.

Q. Are there a lot of them? A. Quite a few of them, yes, sir.

S. M. 809

2213

Q. Do you mean when you say quite a few, as many as 50? A. I believe so, yes, sir.

Q. Do they work under him? A. Yes, sir.

Q. And then he is responsible to the building superintendent, is that it? A. Yes, sir.

Q. Was he in this office, do you know, at the time you say you signed? A. I did not notice him.

Q. Who did you notice in the office? A. A fellow that has been pointed out to me as Mr. Idelback, I believe his name is.

Q. Any other man? A. No, sir, not at that time.

2214

Q. Do you know whether or not Mr. Idelback, has previously been a member of any other labor organization? A. Not to my knowledge, no, or yes, he had at that time been a representative from 41st Street, Waterside Station, to the E.R.P.

Q. That's the employees representation plan? A. Yes, sir.

Q. That was when the plan was still in existence? A. Yes, sir.

Q. Can you tell me whether or not you noticed what

S. M. 810

this gentleman was doing in that office? A. Well, at the time I saw the man he was sitting at the table and

the only one purpose I could understand as long as the sign was on the door was to collect the dues for the A.F.of L.

Q. Did you notice whether or not there were other cards on the desk? A. There were cards on the desk, yes, sir.

Q. You mean like Board's exhibit No. 6 that I just showed you? A. Well, I could not see, I don't know whether it was those cards or not, or some other cards where notification was made they paid their dues.

Q. Did you see any men go in or come out? A. Not 2216
at that time.

Q. And was this during working hours he was there?

S. M. 811

A. It was right before working hours, right before. I would judge about ten minutes to eight.

Q. That is when you saw it? A. Yes.

Q. Was it there during the day? A. It was there during the time the paymaster was there.

Q. When was the paymaster there? A. The paymaster comes to Hell Gate Station Wednesday afternoons, Thursday mornings, and Friday nights. 2217

Q. What does the paymaster come there for? A. With the weekly payroll for the men.

Q. To pay the men off? A. Yes.

Q. Was that the day the men would get paid off? A. Yes.

Q. What time do you get paid off? A. On Wednesdays, we get paid off from 2:30 to approximately five o'clock. On Thursday mornings, from eight to nine o'clock in the morning. On Friday afternoons, from about four to five o'clock.

Q. This was Thursday that you are telling me about? A. Wednesday I am talking to you about.

Q. I see. Was he there Thursday, too? A. Yes.

Q. Was that sign there Friday, too? A. Yes.

S. M. 812

Q. Was he there Friday, too? A. Yes.

Q. And when did you go in to get your pay? A. I went to get my pay on Wednesday afternoon. I was going on my vacation the following week. Instead of taking my days off on Tuesday and Wednesday, I took my days off the end of the week.

2219 Q. Yes. A. We don't get paid off in the office. We get paid off on the fifth floor. It is an office where we call the frequency changing building.

Q. Yes. A. We got paid off. Coming back into the machine shop, as we come in one by one after being paid off, we walked into the shop, the machine shop foreman said, "Well, fellows, go down and pay your dues."

Q. When was that? A. Wednesday afternoon. We got paid off, I would say, approximately between three and four-thirty.

Q. Did he say it to you? A. Yes.

Q. And to the other men working there? A. Yes.

2220 Q. You heard him say it? A. Yes.

S. M. 813

Q. And did you notice whether or not any of the men went down? A. A few of them went down, to my knowledge.

Q. Do you recall who the men were, to your knowledge? A. Yes.

Q. Who were they? A. A fellow by the name of Pete.

Q. Yes. A. As far as I can recall got paid that day.

Q. Did you notice other men going down? A. I heard of other men going down that day.

Q. Is that the first time you heard the machine shop foreman go down and tell men to go down and pay their dues? A. Yes.

Q. Did you hear him tell the men to do it at any other time? A. No.

Q. Did you notice, after the first day, whether or not other men adhered in addition to this one that you have already described? A. Yes.

Q. For the purpose of collecting dues? A. Yes.

Q. And do you know their names? A. One fellow by the name of Nielsen. His first name, I don't know, an 2222

S. M. 814

electrical repairman, an electrical operator, and another man in the boiler room maintenance by the name of Jimmy Brady.

Q. Are those from the Hell Gate plant? A. Yes.

Q. Do they work in your department? A. Not in my department, no, sir.

Q. In a different department? A. Different departments of the plant.

Q. Different buildings? A. No, the same building.

Q. The same building? A. Yes. 2223

Q. But in no department that you worked in? A. No.

Q. And how long had you known those two men? A. Well, I have seen them in the plant for as long as I have been employed by the company.

Q. Yes. And do you know whether or not they were members of any labor organizations? A. Not to my knowledge, except the E.R.P.

Q. You knew they had been members of the E.R.P.? A. Yes.

Q. Do you know what offices they held in the E.R.P.? A. I believe Nielsen was a representative, well, if it was

S. M. 815

the electrical operating, I don't know, or electrical repair maintenance. Brady was a representative for the boiler room and maintenance in the last part of the E.R.P. plan.

Q. And the employees representation plan at this time was out of existence. Is that right? A. Yes.

Q. And when was it that you saw these two men there for the purpose of collecting dues? A. Well, I cannot fix the date exactly.

Q. Was it after the Wednesday that you told us
2225 about? A. Yes.

Q. Well, can you fix the time then after Wednesday? A. I cannot fix the time exactly. I cannot recall how many weeks Mr. Eidelbach was in the office.

Q. Well, would it run you into the month of May or June of 1937? A. The month of May, I would say.

Q. 1937? A. Yes.

Q. Where was it that you saw these two men? A. At the same office that Mr. Eidelbach was at.

Q. The plant, or—the janitor foreman's office? A. Yes.

Q. Was the sign there, too? A. Yes, sir.

2226 S. M. 816

Q. The same sign? A. Yes.

Q. And how many days did you see these two men in that office? For what period of time? A. Well, I saw him on a Wednesday, on a Thursday morning, on a Friday night, as we were leaving work.

Q. Those were the days when the men got paid off? A. Yes.

Q. And do you know whether or not they were there only at the times when the men were being paid off, or were they there during the day? A. I would say they were there during the time the men were paid off, a little before and a little after.

Q. And was any one else in the office with them? A. Not to my knowledge.

Q. And what did you see them doing? A. With the cards.

Q. Did you notice whether or not the men were going in? A. Personally, I did not notice any other men going in.

Q. Was it reported to you by men that they had been in and paid? A. Yes.

Judge Ransom: I object to that as incompetent.

Trial Examiner Gates: It may stand. 2228

Q. (By Mr. Moscovitz) Who were the men who reported to you they had been in and paid? A. Well, there

S. M. 817

is different ones, I would say different men come in, so-and-so paid and so-and-so paid and I cannot recall exactly who came in to me with those words.

Q. I see. Did you get paid at that time? A. No, sir.

Q. And had you seen any other men there at any other time after that? A. I seen Mr. Nielsen in the office with a card for the purpose of collecting dues. 2229

Q. Who is Mr. Nielsen again? A. The man which was a representative of the old E.R.P. plan.

Q. Where did you see him? A. In the boiler room office.

Q. When was that? A. That was last Monday.

Q. Last Monday? A. Yes.

Q. You mean Monday of this week? A. Yes, sir.

Q. What time of the day was it when you saw him there? A. Approximately in the hours between eleven and one, I would say, those hours between twelve and twelve-thirty—

Q. What was he doing? A. From what I heard of the men at the boiler room, he was there for the purpose of

S. M. 818

collecting the dues.

Q. Well, did you see him in the office? A. I saw him in the office, yes, sir.

Q. And was the sign there? A. No, sir.

Q. Did you notice whether or not he had cards? A. I noticed he had a box and an envelope, sitting down at the desk.

Q. Who else was in the office at the time? A. I don't recall who was at the office at the time except the boiler
2231 room bookkeeper.

Q. Have you seen any one else since then? A. I have not been in the plant since that day.

Q. Why not? A. My days off is on Tuesdays and Wednesdays.

Q. And when do you go back to work again? A. Tomorrow morning.

Mr. Moscovitz: That's all.

Judge Ransom: I should like an opportunity to check up on these matters before cross examination. I had no idea of this witness's existence until he took the stand. I have no way of checking any-
2232 thing at this moment.

Trial Examiner Gates: Any objection, Mr. Moscovitz?

Mr. Moscovitz: What is that?

Judge Ransom: I say, I would prefer to have an opportunity to check on this witness as to whom

S. M. 819

I had never heard until a few minutes ago before cross examining.

Mr. Moscovitz: You mean this afternoon?

Judge Ransom: I don't know if I can check by then, Hell Gate is quite a ways from here.

Mr. Moscovitz: I can put another witness on, the only point is that I would not like to keep this next witness and this one after today because they do go back to work.

Judge Ransom: I will do what I can on it.

Mr. Moscovitz: You wait until this afternoon.

(Witness excused.)

Mr. Moscovitz: I will call Mr. Symon.

2234

JOHN SYMON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. Symon? A. 280 Decatur Ave., Jersey City.

Q. That is New Jersey, isn't it? A. New Jersey.

Q. By whom are you employed? A. Consolidated Edison Company.

Q. At the Hell Gate plant? A. At the Hell Gate plant. 2235

Q. How long have you been there? A. At Hell Gate,

I have been there six years, at Sherman Creek I was five years.

Q. You have been working, then, for the company for eleven years? A. Eleven years.

Q. What is your job at the present time? A. Station mechanic, third class.

Q. You work in the same department that Mr. Harding does? A. I do.

Q. Do you remember the U.R.E.W., which is affiliated with the C.I.O.? A. I am.

Q. How long have you been a member of that organization? A. Since this past April.

Q. April 20th? A. April 14th.

Q. April 14th? A. Yes.

Q. 1937? A. Yes, sir.

Q. Before that, were you a member of the local of the I.B.E.W.? A. No, sir.

Q. You were not? A. I was not.

2237 Q. Were you a member of any labor organization before then? A. No, I wasn't.

S. M. 821

Q. I see, so that this is your membership in your first labor organization, is that right? A. Yes, that's right.

Q. Were you a member of the E.R.P.? A. E.R.P.?

Q. Employees Representation Plan? A. I was.

Q. At the time you became a member of the U.E.R.W. Local, you were no longer a member of the E.R.P., were you? A. So they tell me.

Q. So they tell you? A. Yes.

Q. Who told you that? A. It was disbanded.

2238 Q. Can you tell me whether or not at any time after you became a member of the U.R.E.W. Local, you were asked to become a member of the different labor organization? A. I was.

Q. Do you recall when it was? A. It was on April 26th of this year.

Q. Of this year? A. Yes, sir.

Q. Will you tell us what happened on that day? A. Well, I was on the job, I was sent for by the assistant

S. M. 822

foreman, Mr. Robert Armstrong, the assistant engineer,

2239

and he called me in to the office and he told me to sign the card.

Q. Whose office did he call you into? A. The machinist boss's office.

Q. Is Mr. Armstrong your boss? A. Well, he is, he is over my boss, so he is entitled, he is over me.

Q. Who is your boss? A. Mr. Anderson is supposed to be my boss.

Q. Mr. Armstrong is over him? A. We take our orders off Mr. Armstrong, too.

2240

Q. Does Mr. Armstrong have the right to fire? A. Well, he can recommend the firing.

Q. I see. Now, into whose office were you told to go? A. Mr. Anderson's office, the machine shop.

Q. Who was it that told you to go in there? A. Mr. Armstrong.

Q. Did you go into Mr. Anderson's office? A. I did.

Q. Do you recall what time of the day this was? A. Well, it was the afternoon.

Q. The afternoon? A. Yes.

Q. Before you quit work? A. Before I quit work.

S. M. 823

2241

Q. In the middle of the afternoon? A. Well, approximately around two o'clock.

Q. Two o'clock? A. Yes.

Q. What happened when you went in there? A. Well, I—

Q. Who was in there, in the first place? A. Mr. Armstrong.

Q. Only Mr. Armstrong? A. Just Mr. Armstrong.

Q. Mr. Armstrong and yourself? A. Yes.

Q. What did Mr. Armstrong when you went in? A. He handed me a card.

2242 *John Symon—For N.L.R.B.—Direct*

Q. What was the card? A. Well, it was a card for the American Federation of Labor.

Q. Was it a card exactly like Board's Exhibit No. 6? A. It was.

Q. All right, what did he say? A. He told me that I had to sign this card. I said, "Is it compulsory that I must sign it?"

Q. He said it is. "It is the company's orders that you must sign these cards." I said, "What does it mean if I don't sign the card?" He said, "Well, you don't

2243

S. M. 824

want to go on relief, do you?" I says, "No," I says, "I will sign the card," I says, "but I have to look out for my wife and family," I said, "so I don't want to go on relief yet." So I signed the card on one side.

Then he called me back and made me sign it on the other side.

Q. The same day? A. The same day.

Q. He called you back from the job? A. No, called me back to the office to sign the back of the card, the pledge, then he left me go back to my job.

2244 Q. You have been working there since? A. I have been working there ever since.

Q. All right. That's all.

Judge Ransom: I make the same request that this go over until this afternoon.

(Witness excused.)

Mr. Moscovitz: Perhaps it would be better if we adjourned at this point until this afternoon.

Judge Ransom: Could we adjourn until 1:30 this afternoon?

(Discussion off the record.)

Trial Examiner Gates: Very well, we will adjourn until 1:15, if that will be time enough.

Judge Ransom: Yes.

Mr. Moscovitz: Yes.

(Whereupon, an adjournment was taken at 12:15 until 1:15.)

S. M. 825

AFTERNOON SESSION.

Trial Examiner Gates: Do you wish to proceed, Mr. Ransom? 2246

Judge Ransom: Mr. Moscovitz has one more man.

Mr. Moscovitz: I am calling my witnesses a little out of line here, Mr. Examiner, but I understand that Judge Ransom is still awaiting some information so I will put Mr. McCarthy on.

Take the stand, Mr. McCarthy.

DAVID M. McCARTHY, called as a witness for the National Labor Relations Board, being first duly sworn, 2247 testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. McCarthy? A. 1786 Sedgwick Avenue, Bronx, N. Y.

Q. Will you keep your voice up so that Judge Ransom can hear you a little better? A. Yes.

Q. By whom are you employed at the present time? A. The Consolidated Edison Company.

Q. In what place? A. 41st St. and 1st Avenue, in the Service Building.

2248 *David M. McCarthy—For N.L.R.B.—Direct*

Q. In what capacity? A. I am a meter tester, third grade.

Q. How long were you working for the company? A.

S. M. 826

Just about seven years.

Judge Ransom: Seven what?
The Witness: Seven years.

Q. (By Mr. Moscovitz) Are you on your day off to-
2249 day? A. No, I am on my vacation.

Q. You are on your vacation. When is your vacation over? A. Oh, I have another week to go, that is the 27th.

Q. 27th of this month? A. Yes.

Q. Then you go back to work? A. Yes.

Q. Are you at present a member of the U.E.R.W.? A. Yes.

Q. Were you, before becoming a member of the U.E.R.W. a member of the I.B.E.W.? A. No, sir.

Q. All right, were you before becoming a member of the U.E.R.W. a member of the E.R.P.? A. No, sir.

2250 Q. So that you entered into the membership with the U.E.R.W.? A. E.R.P. is the company union?

Q. Yes, employees representation plan? A. Yes, I was—yes, the employee representation plan, I was a member of that.

Q. You were a member of that? A. Yes, sir.

S. M. 827

Q. But the plan had disbanded before you became a member of the U.E.R.W., is that right, in other words, you were no longer a member of the plan when you became a member of the U.E.R.W., is that right? A. Well, it was very indefinite, there for about a week we did not know whether the company union was still in effect.

Judge Ransom: I move to strike that out.

Q. (By Mr. Moscovitz) Instead of using the words "company union," will you use the word "employee representation association?" A. Yes, employee representation.

Q. Well, just simply say "the plan." A. The plan, yes, sir; well, it was very indefinite the first week.

Q. What period of time are you speaking of about now? A. When the company first announced that it had recognized the I.B.E.W.

2252

Q. When was that? A. Let's see.

Q. April of 1937? A. Yes, sir.

Q. Well, is that your best recollection, April, 1937? A. Yes, sir.

Q. When you say the company announced, who did you mean in the company? A. Well, it was announced

S. M. 828

in the paper and the following day Mr. Ruhl, the foreman—

Q. Well, by whom was the announcement made in the paper, was there a reference to any official of the company? A. Yes, sir, Mr. Carlisle had recognized the I.B.E.W.

2253

Q. Now, at that time was the plan in existence? A. The plan?

Q. To your knowledge, or was it still in the state of disbandonment? A. Well, according to Mr. Ruhl, he did know himself whether it was in existence any longer or not.

Q. Well, when did he tell you that? A. Why, I think it was on the 19th, the announcement was in the papers.

Q. April 19th? A. Yes.

Q. And it was— A. And the following day, was the 20th.

2254 *David M. McCarthy—For N.L.R.B.—Direct*

Q. Of this year? A. Yes, and he called all the men together and he told them not to sign anything.

Q. Who is Mr. Ruhl? A. He is the foreman on the tenth floor meter bureau, known as the test room formerly.

S. M. 829

Q. Was he your foreman? A. Yes, sir.

Q. Were there any other bosses over you outside of Mr. Ruhl? A. Well, yes, Mr. Kennedy, Mr. Hitchens.

2255 Q. Mr. Kennedy? A. Yes.

Q. Was Mr. Kennedy above or below Mr. Ruhl? A. He was below.

Q. I see, and who else was there below Mr. Ruhl that was a boss of yours? A. Well, Mr. Bradhurst is rated as assistant foreman.

Q. Is he the first man above you, the first supervisor employee above? A. Well, there are two, really, immediately beneath Mr. Ruhl.

Q. Who were they? A. Mr. Bradhurst and Mr. Hitchens.

Q. And what are they known as? A. They are both

2256 rated as assistant foremen.

Q. And Mr. Ruhl employ—when did Mr. Ruhl come?

Q. Well, he is above the whole group.

Q. He is above those two, isn't that right? A. Yes, sir.

Q. And was his title foreman? A. Foreman, yes, sir.

Q. Do you spell his name R-u-h-l? A. R-u-h-l, right.

S. M. 830

Q. Do you remember his first name? A. I think it is Edwin C. Ruhl.

Q. And who is above him in the department? A. Mr. Murphy.

Q. Was Mr. Murphy—what is Mr. Murphy's job there? A. General superintendent, I believe it is.

Q. He is the top boss, is that right? A. Yes, sir.

Q. How many men in your department? A. Approximately a hundred.

Q. A hundred? A. It is divided between the A.C. and the D.C. group.

Q. Yes. Now, you say that the day after you read this announcement in the newspaper, Mr. Ruhl called you together? A. Yes.

Q. Was this during working hours or after working 2258
hours? A. During working hours.

Q. What time of the day was it? A. Half past one, two o'clock.

Q. Was this during your lunch period? A. No.

Q. What time is your lunch period? A. From a quarter to twelve to a quarter after twelve.

Q. Where did he call you together? A. Right outside

of his office. There is a long table, I would say, about 25 ft. long, and he stood on one side, and he lined the men up on the other side. 2259

Q. How many men? A. Approximately 80 or 100 men.

Q. Yes, and did he call for you men to come up, or did he send instructions up? A. All the assistant foremen came around and said the boss wants to speak to us in front of the office.

Q. Do you know whether or not Mr. Ruhl can fire men? A. Not directly, but if he makes recommendations, why, you are through, that's all there is to it.

Q. After you all got up to this table, confronted by Mr. Ruhl, what took place? A. Well, they told us not to sign anything one way or the other, and then went into a discussion on—

2260 Q. What do you mean, he told you not to sign for anything one way or the other? Was there any preliminary statement by him? A. Yes, he said, in view of the fact that the representatives of the company plan were down in 15th Street, that they had not yet decided whether it was to be an independent union come into the field or the I.B.E.W. would officially come in, he would advise us not to sign anything, but in view of the fact that in the papers the I.B.E.W. was recognized, he felt.

2261 S. M. 832

that if the company does officially recognize the I.B.E.W., that we, being smart boys and knowing on which side our bread was buttered on, we would sign whichever way the company felt.

Q. He would sign? A. No, we would sign.

Q. Is that all he said? A. No, he went into a discussion of the telephone union about which a good many of the boys felt very highly of.

Q. What union is that? A. I guess it would be called the Telephone Company Union.

Q. Yes. A. He said it was nothing but a company
2262 union; he knows some men high up in it, and it is generally looked upon as a company union, and company controlled. And that is about all there was.

Q. Then did you go back to work? A. Yes.

Q. Was that the last time Mr. Ruhl spoke to the men in your department as an assembled whole? A. No, sir, we were called together the two succeeding days.

Q. Oh, were you called to the same place the next day? A. The next day.

Q. The same time? A. Just about the same time, immediately after lunch.

S. M. 833

Q. Would you shut down your operations for the time being, or would you leave a skeleton code there when you went to see Mr. Ruhl? A. No, everything was shut down when we went to the meeting with Mr. Ruhl.

Q. How long were you up with him the first time? A. I would say approximately 45 minutes or an hour.

Q. You say the next day he called you up the same time? A. Yes.

Q. The same number of men? A. Yes.

Q. The same place? A. Yes. 2264

Q. Any other men there outside of the men working in your department and Mr. Ruhl? A. Well, perhaps one of the men from the store rooms division, where they keep the meters and the porter, who happened to be present, would stop and listen in.

Q. Well, then, what took place at the second meeting? A. Well, approximately the same thing as in the first meeting. He said the boards, the representatives were down in 15th Street again.

Q. You mean the representatives of the plan? A. Yes.

Q. Yes. A. And not to sign anything, that that day 2265

S. M. 834

we would definitely know whether we were to be an independent union or I.B.E.W. men and, of course, there was some protest about that.

Q. Did you protest? A. Not only myself, but several other men protested, and men who were supposedly representing us making our decisions without consulting us.

Q. Who did all the protesting, do you recall? A. Well, myself and O'Brien, Tommy O'Brien, and Fred Strooney. Well, they were the three, anyway.

2266 *David M. McCarthy—For N.L.R.B.—Direct*

Q. At that time, were you a member of the U.E.R.W.? A. Yes.

Q. How long had you been a member of it at that time? A. Well, I would say about two weeks.

Q. About two weeks? A. Yes.

Q. And this was about the 20th of April, is that right? A. Yes, sir.

Q. What was the nature of your protest outside of what you have already told us that you did not want these men down there making decisions for you? A. I
2267 pointed out that the company had always been, always had an anti-labor policy and Mr. Ruhl himself had always been very strenuously opposed to any labor organization.

Q. Did you point that out to him? A. Yes, sir.

S. M. 835

Q. Did you tell him that in so many words? A. I did.

Q. How did you say that to him? A. Well, I said, "Mr. Ruhl," I said, "in view of the fact that this company had always been anti-labor and even against the old brotherhood," I said, "now you turn around and without consulting with the men, the company union, the company
2268 plan representatives are going to go down to 15th Street, and you know as well as I do that they are going to come back I.B.E.W., it is a foregone conclusion that you are just reversing every statement you ever made to me in the old brotherhood days and now again under the present situation."

Q. What did he say? A. Well, in his talk he pointed out that the I.B.E.W. was an old established union and that it had previously had contacts with the Edison Company and I had pointed out that it was a contract not to organize the employees.

Q. What contract was that that you refer to? A. I am referring to a contract that is over in the Public Li-

brary, I think it was signed by Local 3 and the Edison Company.

Q. When? A. 1924.

S. M. 836

Q. I see, and what did Mr. Ruhl say? A. Well, he shrugged his shoulders and at that time he said, "I personally know that this company is bigger than any labor union and if you fellows know which side your bread is buttered on, you will go along with the company regardless of what union it should recommend or whether it 2270
should recommend no union at all.

Q. Did you have anything further to say? A. Well, yes, I pointed out that it was un-American and un-Christian for the company union delegates who are supposed to represent us to go down to 15th Street without consulting us again and then come back and tell us that we have got to sign I.B.E.W. and I said, "The way in which they put it was that when you question them as to what they know about that organization they say, 'well, what am I going to do, stand up, I got a wife and family.'"

Q. Well, what is 15th Street that you refer to? A. 2271
That's the main office of the Consolidated Edison Company.

Q. I see. And did Mr. Ruhl say that these delegates were down there? A. Yes, sir.

Q. Did he say with whom they were meeting? A. No, sir.

Q. Did Mr. Ruhl make any references to other labor organizations while he was addressing you? A. Any other?

S. M. 837

Q. Outside of the I.B.E.W.? A. Well, yes, one of the

things in favor of the I.B.E.W. was the fact that it was the I.B.E.W., it was less radical then the C.I.O. in the eyes of the company.

Q. Did he make any other statement? A. Well, not that I remember.

Q. Well, how long were you there at that meeting? A. Well, I would say about three-quarters of an hour, but immediately after the meetings the fellows would gang up in little groups to discuss it further with, well, the assistant foremen among themselves.

2273 Q. You weren't doing much work those days, were you? A. Well, no, sir, there was very little work done that whole week, there was a good deal of discussion on the floor.

Q. A lot of feeling among the employees? A. Yes, sir.

Q. Bitterness? A. Yes, sir, there was quite a bit of bitterness.

Q. Now, the following day you said that there was another meeting with Mr. Ruhl? A. Yes, sir, and at that time it was definitely established—

Q. Well, just a moment, was that at the same place?

2274 A. At the same place.

Q. At the same time? A. Approximately the same time.

Q. The same group of men? A. Yes, sir.

Q. Called in the same way by the assistant foremen coming through? A. Yes, sir.

Q. And what took place at that meeting? A. Well, it was definitely established that the C.I.O. was going to be the union.

Judge Ransom: I move to strike that out, the argument to the answer.

Trial Examiner Gates: You concede that?

Mr. Moscovitz: I agree with the Judge on that, Mr. Examiner, I would like to put the question again.

Trial Examiner Gates: Very well, has the date of this meeting been fixed?

Mr. Moscovitz: Yes, it is the day after the meeting of the 20th, it would be the 21st of April, 1937, is that right?

The Witness: Yes, sir, I believe it was on a Thursday. 2276

Judge Ransom: The previous answer is stricken by consent?

Trial Examiner Gates: Yes, I thought this was the third meeting.

Mr. Moscovitz: This is the third meeting, isn't that right, Mr. McCarthy?

S. M. 839

The Witness: Yes, this is the third and last meeting.

Q. (By Mr. Moscovitz) Now, you say that you all assembled in the same hour? A. Yes, sir. 2277

Q. As the previous meeting? A. Yes, sir.

Q. Mr. Ruhl was there again? A. Yes, sir.

Q. What did Mr. Ruhl say this time? A. Well, he said it is definitely established now that what was formerly the company plan representatives are now I.B.E.W. representatives, and any further discussion, any question about the I.B.E.W. would be referred to your particular delegate.

He pointed out that it was only a temporary set-up, that we were still to continue under the company plan representatives and, well, there was some more discussion,

2278

you know, some men resented the fact that the bosses should even discuss a union to the men and, well, it came out that Mr. Ruhl again pointed out that it was a big company and whenever it said there was to be no union, well, there was no union to speak of, and now that we were to have the I.B.E.W. it was safe to assume that we were going to have the I.B.E.W. and that we were all intelligent men and again said, "If you want to put it that way, sign up or else—"

S. M. 840

2279 He discussed the possibilities of a closed shop when the I.B.E.W. was signed up 51 per cent of the employees.

Q. He said that? A. Yes, sir.

Q. Go ahead. A. He did not know where the fellows who did not sign would stand, he said, "It's generally conceded when there is a closed shop those who aren't a member of the organization holding the closed shop, it just don't work," he said, "that is in any labor organization."

Q. Did he make any further statement? A. No, sir.

Q. And did the meeting then break up? A. Yes.

2280 Q. Went back to work? A. Yes, after having little private conversations in groups.

Q. Still were not doing much work; is that right? A. No, sir.

Q. And did Mr. Ruhl or any of his assistants ask any of you at that time to actually sign up with the I.B.E.W.? A. No, they didn't come around with the cards, but they did go from bench to bench, talking to the men.

Q. Who did? A. Well, Mr. Hitchens, Mr. Kennedy.

Q. Those were the assistant foremen? A. Assistant

S. M. 841

foremen and first grade tester, which is looked upon as an assistant foreman, too.

Q. Which one is the first grade tester? A. Mr. Kennedy.

Q. Was Mr. Ruhl there, too? A. Yes, he was.

Q. Would he do the same thing? A. Well, he did most of his private talking to me, I will say, but while he was talking to me, Mr. Bradhurst, Mr. Kennedy, Mr. Hitchens, and Mr. Russell were going all over the floor.

Q. You saw them going all over the floor? A. Yes, and whenever possible I walked into the conversation.

Q. What did you see them do? A. Well, they would say, "Well, boys, have you signed up yet?" And if a 2282
man said no, why, they would say, "Well, you should, for obvious reasons. The company wants the I.B.E.W."

Q. Did you hear them say that? A. Yes, each and every one of them.

Q. And was this circularization being done while Mr. Ruhl was on the floor? A. Yes, I'll say it was.

Q. And was it after the third meeting? A. Yes.

S. M. 842

Q. On the same day? A. Yes, continued all week.

Q. Continued all week? A. Yes.

Q. In other words, Friday as well as Thursday? A. 2283
Yes.

Q. Did it continue Saturday? A. Well, we don't work Saturdays.

Q. Did it continue into the next week, Monday? A. Well, yes, but not on such a wide scale.

Q. I see. It is still going on? A. No, I just say no.

Q. When, to your knowledge, did it stop? A. Well—

Q. When did you last see it being done, rather? A. Say, Friday.

Q. Of this last week? A. Last week, yes.

Q. You don't mean the last Friday of this month, do you? This is June. Do you mean the Friday following

the meeting that you last attended in April? A. That's it, the last Friday in April, that's what I mean.

Q. Now, the last meeting that you attended was on a Thursday; is that right? A. That's right.

S. M. 843

Q. Then you say you saw it going on Friday? A. Yes.

Q. Then you saw it going on in a more limited way Monday; is that right? A. Monday, yes.

2285 Q. And it went on through up to the following Friday, as far as you know? A. Yes, to a very limited extent.

Q. I see. Now, did Mr. Ruhl or either one of the assistant foremen speak with you about becoming a member of the I.B.E.W. individually? A. Well, Mr. Ruhl spoke a lot about the advantage of joining the I.B.E.W. on the ground that it is the one that has the company okay.

Q. When was this? A. Well, right from the time that the announcement appeared in the paper.

Q. This on the floor or outside of these meetings you
2286 have been talking about? A. Outside of those meetings

Q. When was the last time he spoke with you about it on the floor? A. I'll say, let's see, on the 20th.

Q. 20th of April? A. 20th of April.

S. M. 844

Q. And what did he say to you? A. Well, he said I was silly playing the role of a martyr, as I was.

Q. What was the martyr that you were playing? A. That I was one of the few men that had refused to sign up.

Q. Did he tell you this while you were at work? A. Yes.

2287

Q. What did you tell him? A. Well, I told him that if he could show me one good reason why I should join the I.B.E.W., aside from the fact that it had the company okay, that I would join it, but I said, "No man that is around here selling the I.B.E.W. gives one good logical reason for joining the I.B.E.W., outside of the fact," that is, as they expressed it, "Carlisle wants it."

Q. What did he say? A. Well, he expressed his opinion of all labor unions, that they can all be bought and handled, and if Carlisle had chosen to recognize the C.I.O., why, that could be handled in the same way.

2288

Q. Is that the last time he spoke to you about it? A. Well, no, practically every day we would have a little talk.

Q. Come over to your bench? A. Yes.

Q. Did he add anything to what he had already told

you when he would speak to you the other times? A. Well, no, except that he told me that it was very foolish, again, to refuse to sign the I.B.E.W. card, that he admired my stand, and all like that, but still, it was very impractical to refuse to go along with the majority.

2289

Q. When was it that he told you that? A. I'll say at one of the private talks, during the first week after the I.B.E.W. was recognized.

Q. And were these private talks always at your bench? A. Yes.

Q. And did you notice whether or not he would go to the benches of other men after he left you to talk? A. Well, he walked from bench to bench, but I couldn't say that he talked—

Q. Was that his usual practice, to go from bench to bench? A. I wouldn't say so.

2290

Q. Before that week, had it been his usual practice to walk from bench to bench discussing these things, then, discussing things with the men? A. No, it was not.

Q. Did you walk into any discussions that he was having with the men after the April 20th discussion with you? A. Well, no, he was about the only one of the assistant foremen that I did not break in on a conversation with.

Q. Now, did you sign up with the I.B.E.W.? A. No,

2291 S. M. 846

sir, not yet.

Q. You have not yet? A. No, sir.

Q. All right. When he told you that delegates of the plant who were meeting at 15th Street were to be the delegates under the I.B.E.W., did you know to whom he was referring? A. Well, yes, Eddie McGrath, Olesen, DelMonte, all of those company plan representatives.

Q. Any others? A. Well, it would naturally go for all these representatives.

Q. Do you know whether or not any of the men did become delegates under the I.B.E.W. after that date?

2292

Judge Ransom: Well, I object to his testifying to that. He hasn't shown that there are any such delegates under the I.B.E.W. The testimony of the government is that the local union met, organized and elected its officers. Whatever may have been the temporary leadership for a few days, that was the procedure.

Trial Examiner Gates: Answer the question. He can state what his knowledge is.

Judge Ransom: I submit he might testify well about the C.I.O., but I don't know how he could testify about an organization to which he does not

belong, as far as its personnel or officers are concerned.

Trial Examiner Gates: He may answer.

S. M. 847

Judge Ransom: Exception.

A. Would you repeat the question, please?

Trial Examiner Gates: Reporter may read it.

(Question read.)

S. M. 848 2294

A. Oh, yes, they all automatically become I.B.E.W. delegates.

Q. How do you know that?

Judge Ransom: I move to strike out that statement as contrary to the testimony of the government, obviously not within this witness' knowledge, calling for a conclusion or argument which he is not entitled to make.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

The Witness: Well, assuming that a delegate 2295
has the power to collect dues, why then the word of Mr Ruhl that they were temporarily at least I.B.E.W. delegates instead of company plan delegates.

Trial Examiner Gates: Well—

Judge Ransom: Especially in view of the answer just given, I now renew my motion to strike out.

Trial Examiner Gates: It may stand, the motion is denied.

Judge Ransom: Exception.

2296 Q. (By Mr. Moscovitz) Did any one of these men to whom you have just referred appear in your department at any time for the purpose of collecting dues or getting men to become members of the I.B.E.W.? A. Yes, specifically a delegate by the name of Olsen.

Q. Is that Harry Olsen? A. Harry Olsen, yes, sir.

S. M. 849

Q. When was that? A. Well, the Friday after the I.B.E.W. was recognized, he was around collecting the
2297 initiation fee of $1.50 or $1.25 from several men.

Q. Did you see him? A. Yes.

Q. Did you see him? A. Yes, sir.

Q. Were you in his presence when he was attempting to collect the dues? A. Yes, sir.

Q. Did you hear what he said, yes or no? A. Yes, sir.

Q. Do you recall with whom he was speaking? A. Yes, sir.

Q. Whom? A. A man by the name of Walsh and Connolly, I think is the name.

Q. You say this was done in your presence? A. It was in my presence.

2298 Q. Well, what was said? A. Well, he had a little receipt book in his hand.

Q. Was this, by the way during working hours? A. Yes, sir.

S. M. 850

Q. What time of the day? A. Well, between two thirty and quarter of three.

Q. Were any of the foremen there? A. Yes, they were.

Q. Who? A. Well, I would say everyone of them.

Q. On the floor? A. Yes, sir.

Q. Will you tell me what took place? A. Well, they

walked up to a group of men with whom I had been speaking, that is Walsh and Tom Connolly, I think his name is, and he waved his little receipt book and he says, "Well, boys, do you want to pay your initiation today?" And Walsh refused and Tom Connolly said, "It is rent day and I can't afford to pay $1.50 today."

And Olsen said "Well, do you want to pay part of it today?"

So he said, "I will pay 50 cents if McCarthy will pay the other dollar".

That was only fooling but he did pay the 50 cents 2300
and he got a receipt for 50 cents.

Q. Does Olsen work in your department? A. Yes, sir, he is a meter tester.

Q. Had he been working at his bench since the I.B.E.W. was recognized? A. Well, it is hard to say,

S. M. 851

they are all over the place, really from bench to bench.

Q. And was that all that took place at that time? A. Yes, sir.

Q. Did you speak with Olsen about it, about his collection of dues? A. Well, I believe it was the following 2301
Friday, it was the next time he came around to collect dues.

Q. That would be in the month of May? A. Yes, sir.

Q. Do you recall the date? A. No, I really don't specifically.

Q. Would that be May 7, 1937, about? A. I would say that is about the date, yes, sir.

Q. What took place on that day? A. Well, he was collecting dues and I protested on the grounds that I had spoken to Mr. Ruhl during the week.

Q. Had you spoken with Mr. Ruhl during the week? A. I had, yes, sir.

2302 Q. After you first saw Olsen collect dues? A. Yes, sir.

Q. What had you told Mr. Ruhl? A. I asked Mr. Ruhl what was the company policy on men collecting dues? So he said, as far as he knew it was not to be done. He says, "I specifically gave Olsen orders not to do it any more", so this Friday I met Mr. Ruhl in the men's

S. M. 852

room and pointed out that I had been trying to get ahold
2303 of him all afternoon.

Q. What time did you meet Mr. Ruhl? A. I would say about 4:30.

Q. And before that on the same day had Mr. Olsen been collecting dues again? A. Yes.

Q. When did you see him collecting dues? A. Well, off and on I would say from 4:30 on.

Q. Yes, and did you speak with Mr. Olsen while he was collecting dues? A. I did.

Q. What did you speak to him about? A. So he says, "Well, it is my job to do it".

Q. What did Olsen say? A. He said it is my job to
2304 do it, there is no use in fighting with me about it.

Q. Well, did you ask him who gave him permission? A. I did, but he wouldn't answer me.

Q. I see, and was it then that you went to see Mr. Ruhl? A. Yes, I walked into the men's room to wash up and while I was in there Mr. Ruhl came in so I asked him right away about the collecting of dues. I told him it had been going all day, and he said, "Oh, no it has not?" So I said, "Well, I have been looking for you

S. M. 853

since about 2:30", I said, and "Olsen has been collecting all day". But he denied that it was true. I said, "Well, if you will just step outside here I will show you",

So he stepped outside the men's room and he was taking $1.50 off of a man and he handed this man a receipt.

Q. Who was the man? A. Well, I forget his name right now, but he was transferred down—

Q. The man collecting was Mr. Olsen, that's what I want? A. That's the man that was collecting, yes, sir.

Q. All right. A. And I showed it to Mr. Ruhl and he said, "Well, what do you want me to do about it?" Or something to that effect.

So then I reminded him that he had said it was against 2306
company orders and he turned around and looked at the clock and he said, "Well, what are you going to do about it now, Mack?"

So I looked at the clock and it was about twelve or thirteen minutes to five and we quit at quarter to five.

Q. Well, when he said, "What are you going to do about it now, Mack?" did he make any further statement. A. Well, he said no more but I told him that it was still illegal and as far as the Labor Board would probably be concerned, they would not be bothered with a little legal

S. M. 854

loophole like that, it is a moral issue, it is morally 2307
wrong, and that is that.

Q. He said that? A. Yes—no, I said that.

Q. You said that? A. Yes, sir.

Q. And was that the only discussion you had? A. Yes, sir.

Q. What did Mr. Ruhl do then? A. Well, he called Olsen into his private office and I went home.

Q. Yes, but at the time you left to go home had Mr. Olsen gone into Mr. Ruhl's office? A. Yes, sir.

Q. When you reported back the next day, do you know whether or not you found the practice continuing? A. That was on a Friday.

2308

Q. Well, you have just been testifying about Friday, May 7th, is that right? A. Yes, sir.

Q. Are you now referring to the following Friday again? A. No, the Monday, the Monday.

Q. The Monday following the 7th? A. And about that time it had died down to a great extent, the company, the I.B.E.W. delegates were instructed, were, I was

S. M. 855

given to understand by Mr. Ruhl, they were to go back to
2309 their benches and just take care of their company duties, and that is all.

Q. When did Mr. Ruhl tell you that? A. He told me the previous Friday.

Q. I see. A. About May 7th.

Q. Yes, go ahead. A. And so far as I could see they obeyed that rule pretty good.

Q. Well, now, at any time after the 7th did you notice whether or not Mr. Olsen or anyone else collected dues again? A. Well, no, I could not say definitely, but he did make the rounds, and I asked him was he collecting, so he said, "No," but if anybody offers to pay, he said, "I will accept it."

2310 Q. When was that? A. Well, that was just last Friday.

Q. Just last Friday? A. Yes, sir.

Q. What do you mean, he was making the rounds? A. Well, walking around speaking to different men.

Q. During working hours? A. Yes, sir.

Q. Go ahead. A. I could not say that he was speaking about union matters or not.

S. M. 856

Q. Well, is it the general practice of employees to go from bench to bench during working hours? A. No, I would not say it is.

Q. Well, aren't there any rules laid down in your department on the question of whether or not you can leave your bench and go from bench to bench? A. Well, they don't hold you hard and fast to it unless you got to extremes of course..

Q. I see. Now, can you tell me whether or not on these other occasions when Mr. Olsen was talking to the men or collecting dues or having these discussions, there were present any of the assistant foremen that you have described before? A. Well, they were always not far away but I could not honestly say that they were really 2312 present.

Q. But you would say it was their custom to be on the floor? A. Oh, yes.

Q. Where the men are working? A. Oh, yes.

Q. Do any of them have particular areas of the department assigned to them or do they go throughout the plant. A. Well, theoretically, Mr. Kennedy and Mr. Bradhurst are A.C. men and they confine their activities to the A.C. group.

Q. What group are you in? A. I am in D.C., a D.C.

S. M. 857

2313

man.

Q. And who was the D.C. man? A. There is a Mr. Alonza, usually in charge of the D.C. group at this particular time.

Q. Was Mr. Alonza in your group or the other? A. Well, he is classed as a D.C. man, he is working over in that section of the building.

Q. That is, Mr. Olsen was in your group? A. Well, he was classed as a D.C. man but he is generally over in that section of the building, that part that houses the A.C. section.

Mr. Moscovitz: That's all.

2314 *David M. McCarthy—For N.L.R.B.—Cross*

CROSS EXAMINATION:

Q. (By Judge Ransom) Now, what is the name of your Bureau or Department? A. The meter bureau.

Q. What's your work in that bureau? A. I am a meter tester, third grade.

Q. Now, how long have you been in the meter bureau? A. Seven years, just about, I started on May 5 or May 7, 1930.

Q. Where is the meter bureau located? A. The 10th floor of the 41st Street building.

2315 Q. At 41st Street and what? A. 41st Street and First Avenue.

Q. Now, the meter testing department is on what floor of that building? A. Sir?

S. M. 858

Q. I say the meter testing work is on what floor of that building? A. The tenth.

Q. The tenth floor? A. The tenth floor, yes, sir.

Q. Is that a very large building? A. Yes, it is quite a large building, it covers a full block and the test room that I am referring to covers the back half.

2316 Q. Now, does the tenth floor—is it about the size of a city block? A. Yes, sir.

Q. And the room where the meter testing goes on is one-half of that floor? A. Yes, sir, approximately one-half.

Q. Now, about how many men are there in the meter testing work at 41st Street? A. Well, I would say between 80 and 100.

Q. And they are all on this floor and in this one room? A. Yes, sir.

Q. You spoke about A.C. and D.C. Of course, to you, and perhaps to me, those are familiar terms. I asked

whether that refers to the type of meters or, more accurately the kind of electric current which is measured by particular types of meters? A. No, that is referring

S. M. 859

to the current.

Q. Yes. A. Direct and alternating current.

Q. That is, there are somewhat different types of meters? A. Yes.

Q. Used for measuring alternating and direct current? 2318
A. That's right.

Q. And both alternating current and direct current services are supplied by the Con-Edison Company in the Borough of Manhattan? A. That's right.

Q. Or parts of it? A. Yes.

Q. Now, on which kind of meters is your testing work primarily conducted? A. D.C., direct current.

Q. Now, will you explain for the record just what meter testing, as carried on in your department, consists of? What do you do there? A. Well, we take the meters off the system as they come back from the system after serving a specific length of time, and we clean them up, make any necessary adjustments and send them right 2319
back to the system.

Q. The meters that you are speaking of are the meters that are owned by the company and are installed on Consumers' premises to measure service? A. That's right.

S. M. 860

Q. And those meters periodically have to be tested for accuracy to be sure that they are neither fast nor slow? A. That's right, within two tenths of a percent.

Q. Yes. And you speak of the required margin within which they must be kept accurate? A. Yes.

2320 Q. Do you know if that is a margin established by the Public Service Commission of the State of New York? A. Yes, it is.

Q. That is fixed by an order of the Commission under the State Law? A. That's right.

Q. Well— A. That is, within three tenths of a percent, I should say.

Q. Well, you have not undertaken to give the full details of the Commission's requirements, but that is what it is basically. It is within— A. 99.7/1/2 percent.

2321 Q. Then, to put it perhaps a little more accurately, but still somewhat approximately, the electric meters cannot be fast but they have to be within a certain margin? A. Yes.

S. M. 861

Q. As to approximation to 100 percent? A. Yes.

Q. Below that amount? A. Below one hundred percent.

Q. And the Commission fixes that standard of accuracy? A. That's right.

Q. Does the Commission also fix, by order, a period
2322 of time within which every meter on Consumers' premises must be brought in and tested for accuracy? A. Yes, it does. Well, not necessarily brought in, but it must be tested.

Q. It must be tested? A. Yes.

Q. Are you able to state as to direct current meters, what is the requirement of the Commission's order in the State of New York? A. I would say once every three years.

Q. The standard as to alternating current meters are the same, or something different? A. No, sir, once every five years, I believe it is.

Q. In other words, under the requirement of the Com-

mission, under the State law, every meter has to be, direct current meter, has to be tested not less than once in three years? A. That's right.

Q. Without the test it cannot lawfully stay on the

S. M. 862

premises of a local consumer? A. I believe that is the law.

Q. Are those tests of the meters in the first instance within that period, examined on the Consumers' premises? A. Yes. 2324

Q. And if a meter is found to need examination and work in the shop by way of calibration, it is then brought in to your meter Bureau? A. No, sir, we either replace it, but more generally we make the necessary repairs on the premises.

Q. You would say, in the run of cases, the meter is brought to the required standard of accuracy on the Consumers' premises? A. Yes, sir.

Q. But if, for any reason, anything in the condition of the meter requires shop work on it, then a new meter which has been tested is installed on the Consumers' premises and the one which had been there before for some period up to three years, is taken out and brought 2325 in to you? A. That's right.

Q. And that process continually goes on with respect to every direct current meter and every alternating current meter in this local territory? A. Yes.

Q. The period of time being different as to the two

S. M. 863

classes of meters? A. Yes.

Q. Now, is the work of your Bureau, or let us confine it for the moment to the work in which you are engaged, do you do work on the premises of the local consumer or only in the 41st Street meter shop? A. I am in the shops

2326 *David M. McCarthy—For N.L.R.B.—Cross*

Q. That is, you are not a field man at all? A. No, sir, not at this time.

Q. How long since you have been a meter tester on consumer premises? A. I will say three years.

Q. So that your work is entirely with meters taken out of use on consumers' premises? A. Yes.

Q. And have been brought in to be inspected? A. Yes.

Q. And made within the legal limits of accuracy under the Commission's order before they got out on the
2327 district again? A. Yes.

Q. And after they have gone through your shop, they go to stores from which meters may go out on the district later? A. That's right.

Q. Let me ask you this: Does the Public Service Commission of the State of New York, through its en-

S. M. 864

gineers or inspectors, participate in this testing of meters in which you are engaged? A. Well, to the extent that they check all our instruments in our laboratories.

Q. That is, your laboratories up there in 41st Street
2328 are from time to time checked by the Commission's experts under some order of the Commission? A. Yes, they are.

Q. Now, how often are your instruments there tested for accuracy in behalf of the State Public Service Commission's representatives? A. Well, I don't know whether it is by order of the Public Service Commission or not, but our particular department, the meter and testing department, check all our instruments about, I will say, every three weeks.

Q. The Commission men come and do that? A. No, not the Commission men. They are our own men.

Q. Oh, your own men? Now, do the Commission men check any of your instruments? A. Yes, they go down to the Public Service Commission periodically from the test bureau and then the test bureau turns and checks our instruments.

I believe that is the—

Q. That is, your company maintains, at 41st Street, is it— A. 41st Street.

S. M. 865

Q. A testing bureau for the instruments that are used 2330
in the work in your department? A. Yes.

Q. They do? A. They believe they check all through the system.

Q. And the instruments that are used in your department are submitted by the testing bureau to the Commission's representatives at the Commission's office? A. Sir?

Q. I say, the instruments that are used in your department are taken to the Commission's offices by the testing bureau of your company? A. I believe they are.

Q. And are tested and calibrated there? A. Yes.

Q. Do you know how often? A. No, I really don't. 2331

Q. But as you understand the matter, your work is wholly carried on in this meter bureau with instruments which have been tested periodically, by the Public Service Commission men? A. Yes.

Q. And do you know where the office of the Commission is? At which these tests are made? A. No, I really don't.

S. M. 866

Q. You don't know? A No.

Q. Where is your testing bureau office? A. Van Damm, isn't it?

2332 Q. What? A. I believe it is on Van Damm Street; isn't it?

Q. And your instruments go from the meter bureau at 41st Street to that testing station? A. Yes.

Q. You said you are on vacation now? A. Yes.

Q. And how much vacation a year do you get with pay? A. Two weeks.

Q. What is your rate of pay per week? A. $26.40.

Q. For how many hours per week? A. A 40 hour week.

2333 Q. How many days a week do you work? A. Five days a week.

Q. During the time that you were a voter under the Employees Representation Plan, you voted and took part in nominations and elections? A. Well, on one occasion I did.

Q. Well, you mean you ran for office? A. No, sir.

S. M. 867

Q. But you did take part on one occasion that you have in mind in nominations and elections? A. Pardon me, I would like to qualify my answer a bit, you see, under the employees plan, I was handed a card. I did not

2334 sign it or anything else as did a good many other men.

Q. Well, you mean the card gave you the right to vote? A. Stating that we were a member?

Q. Yes. A. You weren't asked whether you wanted to, the card was made out in your name and you were handed it and I understand that you were a member and I was asked to vote just as every other employee was, so while I was not exactly a member, I did participate in the one election, I voted.

Q. That is, you only voted in one of the elections that were held under that plan? A. Yes, sir.

Q. That was the election of the members of your bureau of your council? A. Yes.

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Q. I mean the council of your bureau? A. That's right.

Q. Now, how many members were there of the council of your bureau? A. Well, I really don't know.

Q. Well, there were one for every fifty? A. One for every 50 men.

S. M. 868

Q. And you don't recall whether you had two members of the department council or one? A. Well, we had one at that time, that was the first election.

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Q. And you spoke about various persons who were first-grade testers and assistant foremen, so-called? A. Yes.

Q. And I think you mentioned Mr. Kennedy, Mr. Russell, Mr. Hitchings, Mr. Bradhurst? A. Yes, sir.

Q. And none of those were men who had any kind of duties which gave them the power to hire or fire employees, did they? A. No, sir.

Q. Do you know whether those men were or were not members of any labor organization? A. Well, as soon as the I.B.E.W. was recognized, why, they were the first group to sign up.

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Q. They signed up? A. Yes, previous to that.

Q. As a matter of fact, I judge from what you have said that practically everybody in your bureau signed up A. You said—

Q. Well, there were only a few, that you were one of a few that did not sign, is that so? A. That is according to the statement of Mr. Ruhl and Hr. Hitchings.

S. M. 869

Q. But in any event as far as Mr. Kennedy and Mr. Russell and Mr. Hitchings and Mr. Bradhurst, they were employees rather than bosses, weren't they, they had

2338 no power to hire and fire? A. Well, they had not actual power to hire and fire, but they were in a supervisory position more or less.

Q. Oh, but they were eligible to become and did become members of the union, didn't they? A. Well, yes, sir.

Q. Do you know whether they were also members of the employees representation plan? A. Yes, they were.

Q. And under that plan supervisors with any power of employment or discharge were not eligible for mem-
2339 bership? A. I never heard anything to that effect.

Q. You never knew that? A No, sir.

Q. Now, about Mr. Ruhl; what do you say his title was? A. Foreman.

Q. Was it in any way your understanding that he had power to employ or discharge? A. No, but—

Q. Well, he either did or didn't, you think he didn't? A. No, he didn't.

Q. Now, what you had in mind was that you think

S. M. 870

that his recommendation, if he made one, might have
2340 carried weight? A. Yes, sir.

Q. Do you know whether Mr. Ruhl was a member of the employees representation plan? A. Yes, I do.

Q. He was? A. He was.

Q. Do you know whether at any of the times that you have been speaking about here today in April or May of 1937, whether Mr. Ruhl was or was not an officer, or a member of the I.B.E.W.? A. Well, he is today.

Q. You don't know at what time he joined? A. Well, I imagine he signed up with the first group.

Q. That is, you figured then that he was a member of the local I.B.E.W. practically from the time he started talking about this matter with you on April 19th or

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20th? A. Yes. He announced that at the second meeting I referred to, that was one of his remarks.

Q. Now, you refer to various persons as delegates of the I.B.E.W. because they came around collecting dues; and you don't know in what capacity in behalf of the local union of the I.B.E.W. Mr. Olsen or anyone else collected dues? You don't know, do you, I am asking you whether you know. A. Well, if I can take Mr. Ruhl's word for it.

S. M., 871

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Q. Well, they were what? A. They were I.B.E.W. delegates under this company plan.

Q. What do you mean delegates under the company plan, that they had been chosen for? A. As Mr. Ruhl explained it, the I.B.E.W. was just going to sort of take the place of the company—

Q. The I.B.E.W. was recognized as a bargaining agency whereas before elected representatives of the employees had been the bargaining agency, isn't that true? A. Yes, that's right.

Q. Now, you aren't suggesting to this Board, are you, or testifying here under oath that there was not, that the 2343 members of the local union of the I.B.E.W. did not hold an election and choose their officers and choose their members of the executive council or whatever it may be called and any other representatives for collective bargaining or for dealing with the employees, you don't know whether there was an election or not, do you? A. Well, yes, we were told.

Q. I am asking you whether you knew it? A. Well, no, I don't.

Q. This Harry Olsen whom you say came on various occasions to collect dues, initiation fees, and dues, you don't know what position, if any, he held in the I.B.E.W.,

the local union, I am asking you what you know. A. No, sir.

S. M. 872

Q. Do you know or were you told as to whether he was or was not a member of the I.B.E.W.? A. Well, he told me himself.

Q. That he was a member? A. Yes, sir.

Q. What was his work with the company? A. What was his job?

2345 Q. Yes. A. He is a D.C. meter tester.

Q. That is he was a member of your bureau there? A. That's right.

Q. In fact he worked in the same room with you? A. Yes.

Q. Is that correct? A. That's right.

Q. How long had he been there? A. Well, I'll say about a year and a half, or two years at least.

Q. He was not a supervisor or anything of that sort, was he? A. Oh, no.

Q. He was one of the men who, in 1936, had been elected by the employees in your bureau as their repre-

2346 sentatives for collective bargaining with the management? A. Yes, sir.

S. M. 873

Q. That is, he was a member of your bureau council elected the previous year? A. Yes, sir.

Q. And he continued in that capacity up to the time that the council was created by the employees under the representation plan, until the time that went out of effect? A. Yes, sir, and he still continues in that capacity.

Q. That is, you think, well, is it your understanding that there is a system of councils under the I.B.E.W.? A. Yes, sir.

Q. That's your understanding of it? A. Yes, sir.

Q. And your answers here today have been on the assumption that the same or a similar structure of organization continues? A. I understood—

Q. I am asking, your testimony is on that assumption? A. That's right.

Q. And that these men who had been in office, you assume or assert, these men who had been in office by votes of employees in the different bureaus in choosing their councils, in 1936, were, as you put it, automatically put into the same positions only it was called the 2348 I.B.E.W.? A. Yes, sir.

Judge Ransom: I think that is all.

S. M. 874.

Mr. Moscovitz: Just a minute.

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Mr. McCarthy, Judge Ransom asked you some questions about the employee representation plan? A. Yes, sir.

Q. As I recall, he asked you whether or not the plan 2349 prohibited supervisory employees from membership? A. Yes, that is right.

Q. Do you know whether or not the plan does? A. No, I never heard anything to that effect.

Q. Well, isn't it a fact that Mr. Ruhl and the assistant foreman are not members of the Employee Representation Plan? A. No, I wouldn't say it is.

Q. Do you know? A. No, I don't know for sure.

Q. Well, do you know at all? A. No, sir.

Q. So that you could not say one way or the other on that point, is that right? A. That's right.

Judge Ransom: He does say they are members of the I.B.E.W. and you have put, yourself, in evidence over my objection the constitution of the I.B.E.W.

Mr. Moscovitz: Yes, now, I would like to put in the employee representation plan which provides that they cannot be members of the Employee Representation Plan.

S. M. 875

2351 Judge Ransom: I object to that because that makes it perfectly obvious what has been obvious all along, namely, that these men that he is talking about were men who were simply employees who were not agents of the management in these respects, they were talking in their own behalf as members of the I.B.E.W.

Mr. Moscovitz: This goes to the point that these persons were as a matter of fact supervisory employees and because of that were not permitted into membership in the Employee Representation Plan.

2352 Judge Ransom: Well, he has testified first that they were members and he has testified now to you that he didn't know, but he has testified, and I don't believe he will change it if they are members of the I.B.E.W. and if they were bosses they could not be in the I.B.E.W.

Mr. Moscovitz: Well, I am not at this point concerned with whether they are members of the I.B.E.W., we will come to that, but I am concerned with this plan at this point and I would like to ask the witness whether or not this is the Employee Representation Plan.

Mr. Ransom: Well, I will concede two things:

One, that these gentlemen concerning whom he has testified were members of the plan, and in the second place, that no persons with supervisory duties in the sense of general foremen or super-

S. M. 876

visory assistants, or general foremen and the like could or did become members of the plan.

Mr. Moscovitz: Well, do you say as a matter of fact then, Judge Ransom, that they were members of the plan, Mr. Ruhl and his assistants? 2354

Judge Ransom: Well, until you took him over, the witness had so testified.

Mr. Moscovitz: Well, it is my understanding—

Judge Ransom: I don't know.

Mr. Moscovitz: Well, it is my understanding that they were not, so you see I could not concede to that.

Judge Ransom: Well, whether they were or not, I don't know, that status was such and the duties were such as to entitle them to be voting members of the plan, I have no doubt.

Mr. Moscovitz: Do you think—well, we will find out about that, but since it is conceded that this is the plan— 2355

Judge Ransom: Well, that is it.

Mr. Moscovitz: Well, it is the plan that was in existence at that time, as I understand it.

Judge Ransom: This, I think, is a copy of the employees representation plan as it existed December 18, 1935.

Mr. Moscovitz: And is this the plan then, can we say that this is the plan that was in existence at the time of the expiration of the plan?

S. M. 877

Judge Ransom: There may have been minor amendments, made by the employees, but I know of none that are consequential since that date.

Mr. Moscovitz: I would like to offer this plan, Mr. Examiner, and I simply refer, for expedition in reading, to page 4, article 3, sub-section 1, which gives the rule for qualifications for voting and for membership in councils.

Judge Ransom: I object to it. It is outside of
2357 any issue here. The complaint and the charge made no complaint or charge as to the employee representation plan. Such questions as I asked this witness were purely on cross examination as to matters concerning which the witness insisted upon testifying in a mistaken manner on direct examination.

We have got, over my objection, apparently one charge under section 8-2 of the Act, and there has been a persistent effort by indirection to create a similar charge against an organization not named, namely, this electoral system provided for in the
2358 plan.

Trial Examiner Gates: Your offer is solely on the basis of whether or not Mr. Ruhl and other gentlemen were members, Mr. Moscovitz? I think it would be much better to establish that by somebody who could testify.

Judge Ransom: Obviously this could not be on the question of whether they were or were not members.

S. M. 878

Mr. Moscovitz: No, it is simply offered to show what the rule was on membership.

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Judge Ransom: I have stated on the record that in the first place such supervisors, in the grade you have tried to make these men appear to be, could not belong under the plan; that in the second place, according to testimony of this witness, these persons whom you misrepresented are members under the plan, or were.

Mr. Moscovitz: I cannot take all these statements or concessions by Judge Ransom as misrepresentations, I am sorry.

Judge Ransom: I didn't mean that in an offensive sense. 2360

Mr. Moscovitz: I am sure you did not.

But Article 3 of this plan provides specifically that those employees identified with the management of the company, such as officers, department heads, dual heads, general foremen, and the immediate supervisory assistants of any of them, shall not be permitted to be members or to vote or to hold office or in any way participate under this plan, you see?

And it is simply that rule that I have been referring to and I think at this point it is quite proper that I offer this document which I do. 2361

Trial Examiner Gates: It may be admitted.

Judge Ransom: Exception.

S. M. 879

(Document referred to received in evidence marked Board's Exhibit No. 11, Witness McCarthy.)

Q. (By Mr. Moscovitz) As I recall your testimony, it was to the effect that delegates to the Employee Representation Plan were elected by the employees in your department. Is that right? A. Yes.

2362 Q. And that you participated in such election? Is that right? A. Yes, on one occasion.

Q. Do you know of any election where representatives of the I.B.E.W., who appeared in your department were elected?

Judge Ransom: Why, I object to that. What does the C.I.O. know about that? This is a question of whether he knows about the election of representatives, officers, and representatives of the local union.

2363 Trial Examiner Gates: Please read the question.

(Question read.)

Trial Examiner Gates: He may answer it.

Judge Ransom: Exception.

A. No, I do not.

Q. You testified that Mr. Ruhl could not hire or fire to your knowledge? A. That's right.

Q. Do you know whether or not he could recommend your discharge? A. Yes.

2364 S. M. 880

Judge Ransom: Objected to as incompetent, and leading. I assume anybody can recommend anything. What counts is power.

Q. (By Mr. Moscovitz) Well, does Mr. Ruhl have the power to recommend?

Judge Ransom: Objected to as immaterial. The witness could not possibly know.

Trial Examiner Gates: He may testify.

A. It is generally recognized that if a foreman like Mr. Ruhl recommends that you should be either transferred

2365

or dismissed, well, you will be transferred or dismissed. It is only a matter of form that you report to 15th Street, and you know, go through the rest of it.

Q. (By Mr. Moscovitz) Well, when a man is to be transferred—

Judge Ransom: I move to strike out that answer as grossly incompetent and improper, wholly outside the witness' territory of knowledge, purely argumentative.

Trial Examiner Gates: It may stand.

2366

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) When a man is to be transferred in your department, is the actual transfer carried out by Mr. Ruhl? A. No, sir, he recommends it.

Q. He recommends it? A. Yes.

S. M. 881

Q. You know that? A. We know that for a fact.

Q. And if a man is to be discharged does he do the actual discharging or does he— A. No, sir, he recommends it.

Q. Well, who does it? A. Well, I really can't say 2367
for the rest of the procedure but I think it would go through Mr. Murphy.

Q. Will you outline for us then the procedure as it exists in your department?

Judge Ransom: I object to it as incompetent, purely outside of the witness' knowledge, purely an effort to create a significance for conversation which had none. I submit the Board—

Trial Examiner Gates: Well, I don't know that the objection would be necessarily put on the points mentioned, but I don't see that it has any particular bearing on this case.

Mr. Moscovitz: Well, is the objection sustained?

Trial Examiner Gates: Sustained. It is conceded, is it not, that any personnel matters are handled by the personnel department of the several companies.

Judge Ransom: Each company, I believe, has a personnel department.

S. M. 882

2369 *RECROSS EXAMINATION:*

Q. (By Judge Ransom) Your bureau is one of the independent bureaus of the distribution engineering division; isn't it? A. Yes.

Q. You are wholly independent of the other bureaus of that division. You operate by yourselves? A. Yes.

Q. For example, the test bureau is maintained as a bureau which checks constantly upon the accuracy of your instruments? A. Yes.

Q. That's all.

EXAMINATION BY TRIAL EXAMINER:

2370 Q. (By Trial Examiner Gates) You referred to Mr. Kennedy. That is not Mr. William J. Kennedy, who is a complainant in this case? A. No, sir, that is Mr. Frederick Kennedy.

Q. I believe you stated in answer to a previous question of mine that the third meeting was held on Thursday, April 21st. I will ask you to look at the calendar and state the date on which the three meetings were held, to which you testified. A. Well, I would say that would be April 5, 6 or 7th, or the 6th, 7th and 8th.

Mr. Moscovitz: Wasn't it the 20th, 21st and the 22nd?

The Witness: I could tell better if I knew the exact date upon which the I.B.E.W. was recognized.

S. M. 883

Mr. Moscovitz: I understood your testimony to be that it was the 19th.

The Witness: I think that's right.

Mr. Moscovitz: The date the newspaper clipping appeared regarding the company's recognition of the I.B.E.W. 2372

The Witness: That's right. That would be the 20th, the 21st and 22nd.

Q. (By Trial Examiner Gates) Very well, that will be all.

(Witness excused.)

GUSTA HARDING, having been previously sworn, was recalled and continued his testimony as follows:

Cross Examination: 2373

Q. (By Judge Ransom) You were a station mechanic, second grade? A. Yes

Q. What is your rate of pay? A. $43.68.

Q. For how many days per week? A. Five days per week.

Q. Hellgate is one of the large generating stations; isn't it, of the city? A. Yes.

Q. And Hellgate is continuously operated? A. Yes.

S. M. 884

Q. Day in and day out? A. Night in.

Q. And so that it is a matter of shift of operation at all times? A. Yes, sir, for certain departments.

Q. For certain departments? A. Yes.

Q. For example, this week, you have Tuesday and Wednesday off? A. No, my days are fixed for Tuesday and Wednesday, I am on the day shift.

Q. You are on a day shift? A. In my department we have no rotation work except when special jobs come up.

Q. So you are off every Tuesday and Wednesday?

2375 A. Yes, sir.

Q. Is that right? A. Under the present set up, that is, under the present schedule of work. That can be shifted by the foremen and the supervisors.

Q. Yes. Will you just describe what the nature of your work was, what you do? A. The nature of my work is repairing whatever machine parts come into the machine shop of the different machines, pumps, et cetera, that is, as far as welding line goes, for the ace-

tylene welding.

2376 Q. Could you give some idea of how large the Hellgate Station is, does it occupy a block, or more than a city block? A. Well, it is two city blocks long, one city block wide, seven stories high.

Q. Where in the Hellgate Station is your machine shop? A. In the frequency exchange building on the third floor.

Q. And is that the main building or one of the accessory buildings? A. Well, it is one of the accessory buildings as far as operating the manufacture of electricity is concerned, the boiler room and the turbine room, including the pump room and ash cellar is in one building,

but generally the main office and certain galleries, store room, machine shop, pipe shop, frequency exchange and store room is located there and the locker rooms are located in this building.

Q. That is, you are not in the building where either the generation of electricity takes place or the transmission or distribution? A. Yes, I am shifted wherever the work calls me, either from the boiler room, pump room, turbine room, or whatever the case may be.

Q. You may be assigned to duties or to work as it is needed in those different departments? A. Yes, sir, I 2378
go in it.

S. M. 886

Q. Your machine shop is in this other building? A. Yes, sir.

Q. What particular kind of work or part of the work of the station mechanic do you do? A. Well, I can do anything in the welding line, anything that has to be welded, no matter what part of the machinery or equipment that might be.

Q. That is, is it mostly repair work? A. Yes, mostly repair work and then it is some, I mean, construction 2379
work, of certain types.

Q. Is that some new construction work? A. Some new construction work, yes.

Q. You say of certain types, what types? A. Well, such as strainer boxes, for straining salt water for certain pumps.

Q. That is for the condensers? A. Well, not in this particular case, this particular case it was, I think the pump is called the house salt water service pump which removes the ashes from the boilers.

Q. Oh, I see, but most of your work is repair work? A. Repair work of broken, worn out, and broken parts, for different machinery.

Q. What part of your work, that is in some approximate idea of time, is done in the machine shop and what part around through the station? A. Well, all small jobs

S. M. 887

that comes to me that I can handle in the shop I would do in the shop. They have a little corner of the shop, what they call the welding shack and whatever job can be handled in there, we handle.

2381 Q. That is, you do the welding for repairs? A. Yes.

Q. And if— A. Also new pipe or pipe work or flanges that have to be welded.

Q. You do no work outside the Hellgate station? A. No, sir.

Q. And it is chiefly the repair of parts of operating equipment which break or wear out? A. Yes.

Q. Or are being replaced? A. Yes, in the regular maintenance crew.

Q. Now, you spoke about Mr. Nelson and Mr. Brady? A. Yes.

Q. Mr. Nelson works where? A. He is an electrical repairman.

2382 Q. In what department? A. Electrical operating.

Q. He is a repair man in the electrical operating department? A. Yes, sir.

Q. He is not a foreman or supervisor at all, is he? A. No, sir, not to my knowledge.

S. M. 888

Q. Do you know Mr. Brady, where does he work? A. He works in the boiler room, the main tanks, I don't know exactly what his title is, boiler room machinist, helper, or whatever it might be.

Q. Well, he is just a working man, not a boss? A. Yes, sir.

Q. Do you know whether Mr. Nelson and Mr. Brady are members of the I.B.E.W.? A. I don't know definitely whether they are.

Q. As far as you know they may or may not be? A. Yes.

Q. Well, did you say that they came around to collect dues? A. I did not testify they came around, I testified they were sitting in the janitor foreman's office collecting dues.

Q. Is that the same time, at the time that you testified that they were in the office of what you call the janitor 2384
foreman? A. Yes.

Q. And they were receiving dues? A. Yes, that's what the purpose was.

Q. You said there was no sign up on that office? A. Yes, in that office, the sign, there was no office, it was the boiler room office.

Q. Well, that is another time and place? A. Yes.

S. M. 889

Q. Well, this Mr. McCann, whom you call janitor foreman, is that his title? A. Well, I couldn't specify his exact title, that's what we call him in the plant because 2385
he don't come under the jurisdiction, that is, I will say he has nothing to do with us, but as far as that goes we call him janitor foreman.

Q. Well, he is sort of a lead off man in the building service employees, isn't he? A. Yes.

Q. A building of that size, or station of that size has a considerable number of buildings service employees? A. Yes, to take care of—

Q. Well, he is one of them and has some responsibility about the work? A. Yes, well, he is not one of the janitors, his main job is to look after the janitors and to give them their job that they are supposed to do for the day.

2386 *Gusta Harding (Recalled)—For N.L.R.B.—Cross*

Q. That is, you think— A. That is, assigns them to the jobs.

Q. Do you think he has power to assign work, or parcel it out among the various janitors? A. Yes, I believe so.

Q. People doing janitor work? A. That's right.

S. M. 890

Q. Do you understand that he employs janitors? A. No, I don't think he has power to do that.

2387 Q. And does he have power to discharge janitors? A. I don't believe he has power to discharge but he can recommend discharge.

Q. Do you know whether he is or is not a member of the I.B.E.W.? A. That I don't know.

Q. You don't know whether he is or was not a voting member under the Employees Representation System? A. I don't know.

Q. I didn't get clearly your identification of the Mr. Idelback, who did you say he was? A. Mr. Idelback, it is my understanding, or it was pointed out to me, used to be a machinist in 41st Street Station, whether he was

2388 No. 1 or 2, I don't know.

Q. That's 41st Street? A. That is called Waterside.

Q. Waterside generating station? A. That's right.

Q. And that isn't the same as the 41st Street service building about which Mr. McCarthy testified? A. I don't believe so.

Q. Well, how was it you brought Mr. Idelback into this picture which you tried to paint? A. I was asked

S. M. 891

who started to collect the dues for the I.B.E.W.

Q. Do you know whether Mr. Idelback is still an em-

ployee of the Consolidated? A. I don't know if he is an employee of the Con-Edison Company now or not, but I seen his name mentioned on I.B.E.W. leaflets, in what capacity I can't offhand say.

Q. That is he held some office or committee position or financial position or something of that sort with the I.B.E.W.? A. Right.

Q. And you are not able to identify it any more at this time? A. No, I am not able to tell you, to identify whether he is still on the Con-Edison payroll, or not.

2390

Q. But in any event, while he was on the Con-Edison Payroll he was a regular employee of the 41st Street generating station? A. As far as to my knowledge, yes.

Q. As far as your knowledge goes? A. Yes.

Q. And in any event you say that he came up to the

S. M. 892

Hellgate Station and received payment of dues there at the times you mentioned? A. Yes, approximately the times.

Q. I think you referred to a sign about the payment of American Federation of Labor dues; was that a printed sign? A. No, it wasn't a printed sign, it was what I would call a hand-painted sign with black, whether it was paint or ink, I wouldn't say.

2391

Q. That was some one who took a large sheet of white Bristol board or cardboard? A. Paper, whatever it might be.

Q. And painted on it, blocked out with the black letters, "Pay American Federation of Labor dues here"? A. No, it did not spell the words American Federation of Labor. It spelled "Pay your A.F.ofL. dues here."

Q. A.F.ofL. dues here? A. Yes.

Q. Do you know whether that was a card which belonged to Mr. Eidelbach? A. I don't know.

2392 *Gusta Harding (Recalled)—For N.L.R.B.—Cross*

Q. Do you know whether he brought it with him when he came up there? A. I don't know.

Q. You are not suggesting that any one but Mr. Eidel-

S. M. 893

bach had anything to do with the sign, are you? A. No.

Q. You spoke about a Mr. Harrigan, whom you said was the bookkeeper, do you know whether he is a member of the I.B.E.W. or not? A. I don't know.

2393 Q. He was the man from whom you got the membership card which you signed? A. Yes, sir.

Q. Do you know whether he was or was not previously a member, a voting member of the employees representation plan? A. I was a member.

Q. No, whether he was, whether Harrigan was a member? A. I don't know.

Q. Then Harrigan was not a supervisory boss at any time; was he? A. I do not know.

Q. He had no power to hire and fire, as far as you know? A. Not to my knowledge, no, but that is not in my department.

2394 Q. Well, you do not suggest, or claim, that he had any supervisory powers, whether he had any powers to hire or fire, do you? A. I can't do that, no, sir.

Q. Now, about John Eagan. Who is he? A. John Eagan is a first grade machinist, acting as assistant

S. M. 894

machine shop foreman.

Q. That is in your machine shop? A. Yes.

Q. Do you know whether he was and is a member of the I.B.E.W.? A. I do not know for sure whether he paid his dues or not. There are rumors going in between the men that he has paid, and I cannot verify whether he has or not.

Q. Well, let me ask you first. Do you know whether he did or did not sign as a member? A. I do not.

Q. You do not know? A. No.

Q. Do you know whether he was a voting member under the employee representation plan? A. I believe he was.

Q. Do you know or understand that he has any power to hire or fire men? A. No, he has no exact power of hiring or firing, but he could make a recommendation to foremen.

Q. That is, you think now that he is in part at least, an assistant foreman, or that he has power to make recommendations? A. Well, yes, if you are not doing the work you should do; or something to that effect, he could

S. M. 895

put in a word for you. I mean, to the effect that you can be laid off.

Q. Well, you testified to a lot of what is understood and rumored in your department. Isn't it understood in your shop that Eagan is a member of the I.B.E.W.? A. No, I couldn't put it that way.

Q. You couldn't put it that way? A. No.

Q. How many men are there, all told, in the machine shop at Hell Gate? A. To my knowledge, it is, I believe, 74, counting the foremen.

Q. Well, I think you said that all but two of them had signed as members of the I.B.E.W.? A. That is what was told to me, yes.

Q. How old are you? A. The last birthday, 30.

Q. What? A. 30.

Q. When did you come to this country?

Mr. Moscovitz: I object to that, Mr. Examiner. I do not see that this has anything to do with this case.

Trial Examiner Gates: Objection sustained.
Judge Ransom: That is all.

(Witness excused.)

S. M. 896

JOHN SYMON, recalled.

Cross-Examination:

2399 Q. (By Judge Ransom) You are also a station mechanic? A. Yes.

Q. At the Hell Gate Station? A. Yes.

Q. What particular type or kind of work as a station mechanic do you do? A. I am a machinist's helper. I help the first class machinist on repair work.

Q. Your place of work is in the same machine shop that Mr. Harding talked about? A. Yes.

Q. And you were sent out at times around through Hell Gate Station? A. Yes.

Q. And your work is all done either in the machine shop or when large equipment is involved, out in the

2400 station? A. Yes.

Q. And you are entirely a helper on repair work? A. That is all.

Q. Now, your rate of pay is what? A. $38.16.

Q. A week? A. A week, 40-hour week.

S. M. 897

Q. Five days? A. Five days.

Q. What are your days off? A. Tuesday and Wednesday.

Q. You spoke about Mr. Anderson. Who do you say he is? A. He is the foreman of the machine shop.

Q. Of the whole shop? A. Of the whole shop.

Q. That is, of how many employees? A. 73 men under him.

Q. Is he your immediate superior, or is there somebody else in between? A. Well, I take orders from Mr. Anderson. When he is off, I take orders from Mr. Eagan, also Mr. Armstrong, if he has any job to send me out on, to help him.

Q. Well, Mr. Armstrong—what is his position? A. He is assistant engineer.

Q. Do you know whether Mr. Anderson is a member of the I.B.E.W.? A. Well, I couldn't say because I never saw him sign any cards or anything to that effect.

Q. Well, is it your understanding and the understanding in the shop that he is a member? A. Well, he never specified.

S. M. 898

Q. What? A. He never specified that he was.

Q. Do you know whether he was an employee who voted under the representative plan? A. That I couldn't say, I couldn't say.

Q. You don't know? A. No.

Q. You don't know whether he did or not? Does Mr. Anderson hire the men for the machine shop? A. No, sir, he does not hire them.

Q. Does Mr. Anderson hir self discharge men from the machine shop? A. No, but he recommends discharges.

Q. You think he has power of making recommendations of discharge? A. They could send you to Mr. Armstrong and they could send you to the assistant superintendent, or the superintendent for your discharge. He would have to proceed all through that before you got discharged, I presume.

Q. That is, the power to discharge is in the hands of

these other people? A. Well, I have never been discharged yet, so I don't know who does the discharging.

Q. In any event, you know that if Mr. Anderson makes a recommendation, that it goes first to Mr. Armstrong, then goes up to the assistant superintendent? A. Yes.

S. M. 399

Q. Of the station? A. Yes.

Q. That's all.

2405 (Witness excused.)

Trial Examiner Gates: We will recess for five minutes.

(Whereupon, a short recess was taken.)

After Recess.

Mr. Moscovitz: I have no other witnesses to call for this afternoon, Mr. Examiner, the rest of my witnesses are to appear in the morning.

Mr. Straub, I thought, was going to take the stand at this point for cross examination, so that 2406 he would take up the balance of the afternoon. He would take up the afternoon and perhaps some part of the morning.

Judge Ransom: The material which I expected has not arrived, so I think perhaps if you will give me a few minutes I will be able to occupy part of the time, at least.

At this stage, assuming that you have no further amendments to the complaint, there are no further amendments, are there?

Mr. Moscovitz: No, sir, not at this point.

Judge Ransom: Then I desire to file an answer.

The legal filing was made today and these are mimeographed copies.

S. M. 900

Trial Examiner Gates: At this stage of the proceeding I believe the answers to be legally filed should be filed as a part of the record.

Judge Ransom: I was going to cover it in both ways. I file as a part of the record, subject to the reservation of the rights therein shown, a copy of the answer verified on behalf of the respondent to 2408
the complaint as amended to include to June 14, 1937. I take it no point is made that the document which is produced here is not a verified original.

Mr. Moscovitz: No point.

Judge Ransom: I don't know just what your procedure is as to the incorporation of that into the record.

Trial Examiner Gates: Was there a verified original prepared and filed?

Judge Ransom: This is the first time there has been an answer.

Trial Examiner Gates: No, but you stated— 2409

Judge Ransom: The original three copies required for what you may call ordinary service have been filed with the Regional Director.

Trial Examiner: There being no objection, the answer is received at this time, but I suggest that the verified copies be substituted for the copy now filed, for the purpose of the record.

S. M. 901

Judge Ransom: Well, if Mr. Moscovitz will produce that tomorrow, we may do that.

2410 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

Mr. Moscovitz: I will produce it before the conclusion of the hearing and substitute it for the one that is now being introduced.

Judge Ransom: With that understanding, it may be temporarily marked.

Trial Examiner Gates: Yes.

(Document referred to was marked Respondent's Exhibit No. 7 for Identification.)

Judge Ransom: We will make a start with Mr.
2411 Straub, if I may.

HAROLD J. STRAUB, recalled as a witness, testified further as follows:

Cross Examination:

Q. (By Judge Ransom) Mr. Straub, when did you become a member of the council of your department in the Bronx Gas & Electric Company under the employees representative plan? A. March, 1934.

Q. And who elected you to the council? A. The em-
2412 ployees of the Bronx Gas & Electric Company, specifically, the employees of the line department of that company.

Q. When did you become chairman of the council for the whole company? A. March, 1935.

S. M. 902

Q. And who elected you as chairman? A. The elected representatives of the employees of the entire Bronx Gas & Electric Company. In other words, the members of the general council.

Q. How many employees did the Bronx Gas & Electric Company have, approximately, during that time, do you

know, and down to the time it was merged into the Consolidated Edison Company, with the approval of the committee? A. I cannot give a direct answer. I can say approximately between four and five hundred employees.

Q. In the whole company? A. That's right.

Q. I ask you, do you know the date as of which the Bronx Gas & Electric Company was merged into the Consolidated Edison Company with the approval of the Public Service Commission of the State of New York? A. I can only quote as an answer the statement of Mr. Carlisle made to us on December 23, 1936. 2414

Q. You quote him as saying that is the date on which the merger was authorized by state law? A. No, I do not.

Q. Is that the date he gave you? A. No, I say I could quote him as making a statement on December 23rd. I

S. M. 903

do not say he said that was the date that went into effect.

Q. You refer to the fact that you and other general council foremen met with Mr. Carlisle on that date? A. Not only was I referring to the fact that we met with him on that date, but I was referring to a statement made by 2415 Mr. Carlisle on that date, to the effect,—oh, he went into a great big lengthy statement that for the first time in so many years the books were clear, and so forth, and that from now on the Bronx Gas & Electric Company has been merged into the Consolidated System—

Q. Possibly you could have answered whether it was that you met with him on that date, December 23rd? A. If you are asking me if I met with him on that date, the answer is very definitely yes.

Q. That is what I was trying to find out. And on that date, he told you that the merger had been legally effective as of that date? A. He certainly did not. He told

2416 us that the merger had been effected. He did not speak of that exact date.

Q. Oh, I see. When did the merger become effective, so far as the merger or consolidation of your department into the like department of the Consolidated Edison Company? A. I can't give any specific date. I can say that immediately after, or around February, different department heads from Consolidated Edison Company

S. M. 904

2417 came up and began taking over various sections of our department.

Q. Was it as late as that? Didn't that begin to take place during January? A. Not that I can recall. It may have. I wouldn't say it did not.

Q. In any event, at that time you continued reporting to Purdy Street, which had been your headquarters before the merger? A. That is right.

Q. Now, the Bronx Company was a relatively small company which served electricity and gas in the East and the Northeast Bronx? A. We served the territory known as the East Bronx.

2418 Q. Yes. A. It was a relatively small company in comparison to some of the others.

Q. Yes. Do you know whether part of its territory formerly was in Westchester County? A. The territory now served by the Consolidated Edison Company?

Q. Was part of the territory of the Bronx Company formerly in Westchester County before it was annexed? A. I don't quite understand you. I cannot say that part of the territory of the Bronx Company was in Westchester. On the other hand, the territory that was served

S. M. 905

right after the merger by the Bronx Company had for-

merly been served by the Westchester Company. The answer is in the reverse.

Q. Well, it may not be very important, no matter, do you know whether Mr. Rosenquest, at the time you became a member of the council under the employee representation plan, whether Mr. Rosenquest was president of the Bronx Company? A. Yes, he was, up until the time he died.

Q. And then he was president, he had been president of that company for a good many years? A. Well, I don't know just how long. 2420

Q. You don't know? A. How many years, I know he had been president.

Q. He was president all the time you were there? A. That's right.

Q. Sometime while you were working for the Bronx Gas & Electric Company, he became president of it, that is some time during that time, also of the Westchester Lighting Company and the Yonkers Electric Light & Power Company? A. I can't recall if that took place while I was working for the company or not, but I do know I distinctly recall him being president of three companies. 2421

Q. I think that you said as to management and collective bargaining matters, the Bronx Company and the Westchester Lighting Company and the Yonkers Com-

pany were treated together or, at least, management acted through one management committee? A. Well, they are not treated together, and I definitely did not say that they were treated together, I said that there was a management committee appointed by the management of the Westchester Lighting Company.

2422 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

Q. And it was the same management committee as to collective bargaining matters which acted for those three companies? A. The secretary of that management committee definitely did, we never met with him the entire management committee.

Q. Well, do you know whether the committee had the same members? A. I assume that they did.

Q. Yes, and Mr. Rosenquest subsequently died? A. That's right.

Q. And was succeeded as president of the three com-
2423 panies by Mr. Pizzano? A. That's right.

Q. Up to the time of the merger, the management committee with which you dealt through the secretary was asked for the Bronx and Yonkers Company's management committee— A. Never having met with the management committee as a whole I could not definitely say that it was, I could only say the assumption was that it was, not definitely, I don't know anything about Yonkers and Westchester.

S. M. 907

Q. Well, you testified about the starting of the em-
2424 ployees representation plan, is it your statement and understanding that the management at the end of 1933 or early in 1934 proposed a vote by the employees as to whether they wished some system of collective bargaining? A. I don't believe it was in 1934, it was 1933, the plan was in existence for a year before I became active in it, I mean an officer in it.

Q. Well, leaving out at the moment the question of date, the management first asked whether the employees wished to take a vote as to the setting up of some method of collective bargaining through elected representatives. A. They asked the employees through the committee that

had been sent up there to see the management, incidentally, the committee was set up by various department heads, not by the employees.

Q. A committee of employees? A. Directed to appear at the Westchester Lighting Company executive offices by department heads whom they worked for, yes.

Q. You were, you said,—that you cooperated with the management about the circulation of those petitions? A. I did.

Q. You understand that those petitions were circulated calling for a vote on the matter, they came from 2426

S. M. 908

the management? A. That's right, they were drawn up by the management, printed by them and given to us to circulate around the employees, which we did.

Q. And the employees to whom you presented these petitions signed them if they thought there ought to be a vote on the question of setting up some plan of collective bargaining? A. Yes, they signed that.

Q. Well, that is what the petitions were about, wasn't it, the petitions were requests to the managament to provide some vote upon the question of setting up a plan 2427 of collective bargaining, weren't they? A. You can probably call it more accurately than I can, you probably have a copy of the last one, because the last one I saw was in 1933.

Q. Well, isn't that what you understood they were for? A. If I can remember correctly, yes.

Q. And those petitions were turned in to the management? A. I am not definite on that point, whether they were turned in to the manageemnt or not, I have tried to recall just what we done with the petitions, but I think that they were turned in to the management.

2428 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

Q. Well, in any event, later there was a vote of the employees taken upon the question of whether it should be set up—whether there should be set up some plan for

S. M. 909

the choice of employee representative? A. It went through several different stages, there was first a vote taken on the Board of Tellers, rather, the temporary Board of Tellers to conduct a vote on the actual referendum or whatever you might call it, and so on.

2429 Q. Is that the first the employees voted—you mean they first voted and they themselves elected a temporary board of tellers from among their number to conduct a vote of the employees on some plan? A. I am glad you brought that out, they did not. The various department heads selected them, the employees in the departments to act as the temporary board of tellers.

Q. Well, was it a temporary board of tellers? A. Yes.

Q. But, then, didn't the employees themselves elect tellers? A. Later, yes.

Q. At a later date? A. Yes.

2430 Q. And the tellers chosen by the employees themselves actually conducted the election to which you referred? A. That's right.

Q. Now, do you recall whether the vote of the employees, when it was taken, was upon two questions: First, a general question as to whether the employees wished some system of collective bargaining through representatives elected by themselves set up; and then, in

S. M. 910

the second place, a vote for or against a particular plan? A. That's right.

Harold J. Straub (Recalled)—For N.L.R.B.—Cross 2431

Q. Well, do you recall whether this initiation of the employees of representation plan, if we may call it that—A. It's all right with me.

Q. —took place at the end of December, 1933, or early in 1934? A. I have some notes as to just when I was elected on this council. Perhaps they might help me recall. I know it was a year previous to my election that the first election of representatives was held.

Q. Well, of course, before any representatives were elected to the council, first there was an adoption of a plan? A. That's right. 2432

Q. And the Trial Examiner asked if we can fix more definitely the dates of these electoral processes? A. That is what I am trying to do.

Judge Ransom: I may say for your Honor's information that that was the data which I had expected to have sent down today which gave those things in documentary form as to dates.

Trial Examiner Gates: Well, as long as it is in the record definitely.

Judge Ransom: I am going to cover it very

S. M. 911 2433

definitely. I am necessarily dealing with these matters in a generalized way because I have not the documents which will fix the dates.

Q. (By Judge Ransom) Well, some time in the winter or early Spring of 1934 the vote of the employees was taken upon those two questions? A. Yes, in March of 1934 was the first election of representatives in the Bronx Gas & Electric Company. Now, there was a voting prior to that.

Q. Yes. So that some time during either December

2434 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

of 1933 or the early months of 1934 there had been this balloting on the two questions? A. I am not positive, I think it was February of 1934. Incidentally, I made a mistake before. I said 1933.

Q. In any event, it was not earlier—that is, the Bronx Company was not earlier than January of 1934, January 1st? A. Not that I can recall.

Q. You may recall that in December or at the end of November, 1933, there had been a similar vote in the New York Edison Company? A. Oh, no, I cannot recall
2435 that.

Q. You cannot recall that? A. We knew nothing about that.

Q. You didn't know anything about that? A. No.

S. M. 912

Q. You didn't mean to testify as to what took place in any of the other companies because you didn't know? A. Absolutely not.

Q. Do you recall what was the result of the vote of the Bronx Company employees on the first question, as to whether this should be set up, whether some plan
2436 should be set up? A. The result was obviously in favor. The plan was set up.

Q. The vote was favorable on both questions? A. Yes, but I can't recall the exact number of votes.

Q. Can you identify this as a copy of the plan which was put in force as to the Bronx Gas & Electric Company (showing witness document)? A. Yes. Now, let me see —there was some change made.

Q. I believe that is the copy which contains the subsequent stipulation which was made in the Bureau Councils.

(Document referred to was marked Respondent's Exhibit No. 8 for identification, Witness Straub.)

Harold J. Straub (Recalled)—For N.L.R.B.—Cross 2437

Q. (By Judge Ransom) Being a relatively small company, as you stated, did the Bronx Gas & Electric Company representation plan have any system of what you may call Bureau Councils and Department Councils such as have been testified to here in the case of the larger companies; or was there representation directly from the bureau into the general council for the whole company? A. If you will read over the plan you will see that regardless of how large or how small a department

S. M. 913 2438

was, if it only comprised two men in the department, it was first called a bureau council and then a department council. These men started from among themselves if there were two one was to be the chairman and the other one had to be the secretary, that was the department council, and it followed in line up to the general council.

Q. Well, did you have the intermediate councils as they did in other companies, that is, were the bureau councils in turn represented in the department councils, and then the department councils in the council for the whole company, the general council? A. In our commercial relations department, I don't know whether it was 2439 called the commercial relations department at that time—

Q. I think it was simply called commercial, wasn't it? A. Yes, commercial, I don't recall the exact title of the department, but I know they had three elected representatives in that department, in all matters relating to that department they functioned as a department as bureau council. They contacted the man in charge of that department for the employees, therefore I would say the functions of the department council were carried out in our plan.

Q. What were the different departments for the purposes of the operation of your council at the start? A.

2440 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

S. M. 914

I think you'd better read them, I forget them also.

Q. Well, you had the various department representatives which are shown in Respondent's Exhibit 8 for identification, each of those departments was represented in the general council by the department chairman?

(Respondent's Exhibit 8 for identification passed to the witness.)

2441 A. That's right. Wait, not always by a department chairman, sometimes a man was bureau council, the bureau council department and a member of the general council all rolled in one.

Q. But by whom was he chosen? A. By the employees of the department.

Q. As they elected by secret ballot their representatives from the department to the general council? A. That's right.

Q. And he was not necessarily the chairman of the department council? A. What is that?

Q. He wasn't necessarily the same person as the chairman of the department council? A. Oh, yes, in those de-
2442 partments that have more than one representative, these people had to agree among themselves which one they decided upon as the chairman of that council and he was the man that was then eligible for membership on the general council.

S. M. 915

Q. Was he elected to the general council by the department council, or was he elected to the general council by the employees in the department? A. The departments that had only a large enough number of employees in the departments to elect only one representative, that

man went right to the general council and those representatives that a large enough number of employees to elect more than one representative they, in turn, elected their own chairman and he in turn came to the general councils.

However, I believe the first year that the plan was in operation, the first general council decided that inasmuch as there was only one department that had at that time more than one representative, that the three of these people would be allowed to sit as members of the general council, but only one of them would have the right to 2444
vote as a member of the general council, the other two sitting there without vote but with voice in matters relating to the employees.

Q. With respect to the election which was first held on the question of whether there should be some system of collective bargaining set up and whether a particular plan should be adopted, likewise in the elections which took place for the choice of representatives by the em-

S. M. 916

ployees, was all the voting done by secret ballot? A. In the departments? 2445

Q. Yes. A. You mean these different departments?

Q. Yes. A. Yes.

Q. The employees voted by secret ballot? A. Yes. I find no fault with that, though, that is all right.

Q. And the voting was for the purpose of those elections, the voting booths were of the type used in elections? A. No, just a minute, Mr. Ransom. We were a small company, we did not spend money like the Edison Company.

Q. You had no voting booth? A. We sneaked over in the corner and marked the ballot, two or three fellows there, they would look over one another's shoulder, but

that was all right, we trusted each other, we worked together many years.

Q. It was as secret as you wanted? A. As secret as could be expected.

Q. In your small company, you did not go to the expense of having voting booths as they did in the large companies? A. You did not know Mr. Rosenquest or you wouldn't ask that.

Q. Well, he is dead, but in any event, what expenses you had for the printing of the notices, the printing of
2447 the ballots and the other necessary expenses of the election, they were paid by the company, were they not? A. Oh, yes.

S. M. 917

Q. Upon the certification of the general council or its chairman? A. The first elections, and my going around with the petition, and everything that had to do with the setting up of the first general council was paid voluntarily by the company, there was no one there to submit a bill, I mean, we weren't in existence, the council could not submit a bill for something they had not incurred.

2448 Q. Well, the management announced that the expenses of this election on whether there should be set up a plan would be paid by them? A. That's right.

Q. And then after the general council came into being, the necessary expenses of printing ballots and petitions and the like was paid by the company? A. The reasonable necessary expenses incurred and so on, it is all stated in there, the answer is yes.

Q. I mean, it was operated— A. Yes.

Q. In the manner described? A. In accordance with the plan.

Q. Yes. A. Yes.

2449

S. M. 918

Q. And that was upon the certification of the general council or its chairman? A. I believe so, yes.

Q. You spoke about the fact that as chairman you were allowed pay for your time spent in the work of the general council chairmanship? A. I believe you have got the wrong impression, Mr. Ransom, I don't recall saying that, I recall saying that any time that I spent as chairman of the council or in contacting employees and so on, my time was carried the same as if I was on a job.

2450

Q. Yes, that is right. A. I did, however, say that we had, or, rather, I had, as chairman of the council an expense account.

Q. That is in addition, isn't it? A. Entirely aside from the council itself.

Q. But let's take a day in which you spent some time in your regular work and some time in the work of the employees representation plan, your time, you were paid for that day without any deduction? A. That's right.

Q. Part of your time was charged, what you might call, to the operating or construction account of the company, the work in which you were engaged and part of your time was charged to the E.R.P.? A. Definitely not.

2451

S. M. 919

Q. Not in the case like that? A. No, all of my time on the E.R.P. was buried, none of my time—

Q. Your company did not have separate accounts on the E.R.P.? A. Oh, no, definitely not, that all went under a definite job number, they selected a gang that I was supposed to be out with and that foreman put my time in or rather the supervisor put it in.

Q. You are sure in the case of your company? A. I am positive.

2452 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

Q. That your time was not in any way charged to an account through which a record was kept of the time spent on E.R.P. work? A. I can go further than that, Mr. Ransom, and tell you that not only in the Bronx Gas and Electric Company but after the merger into the Consolidated Edison Company, I can give you the names of the foreman that carried my time for months and I never worked with him. I can give you meetings I attended.

Q. How long, you say months in your argumentative way, how many months could it have been? A. I am
2453 sorry, if it is argumentative, I didn't mean to be.

Q. I know you wouldn't be argumentative to the C.I.O. for anything, but you wish to say positively that in neither the Bronx Company nor in the Con-Edison Company the

S. M. 920

time spent on the employees representation plan worked in either company was it charged to that or a similar account? A. I can state positively that never in the Bronx Company was any of my time ever charged to the E.R.P.

I state further, at least in part, since the merger of the
2454 Bronx Company with the Consolidated Company, at least part of my time that I spent as an employee representative was not charged as such.

Q. Your necessary disbursements you said for carfare and phones were charged to E.R.P. expense account? A. Not phones.

Q. You didn't do it? A. Not for phones—carfare and lunch money, yes.

Q. But such disbursements as you turned in, you said they ran up to $2.50, were charged to the E.R.P. account? A. No.

Q. They were not? A. No, there was no E.R.P. account in existence, it was a definite account but it was not an E.R.P. account.

Harold J. Straub (Recalled)—For N.L.R.B.—Cross

2455

Q. All right, we will have to see how far you are right about that. A. I will give you the account name, if you want it.

Q. Yes, what was it? A. We had a definite charge, miscellaneous expenditures incurred in connection with

S. M. 921

employee activities. Does that sound like E.R.P.?

Q. Did the councils or the E.R.P. have any funds from dues or any other sources? A. Absolutely not.

2456

Q. You stated that while you were chairman of the general council for the Bronx Company, operated that quite independently of the other councils in the Consolidated Edison System. Is that correct? A. We operated for the employees of the Bronx Gas & Electric Company independently.

Q. Yes? A. I mean by that we contacted the management of that company for those employees.

Q. Yes? A. But nevertheless, we had on many, many occasions met as a group in various councils throughout the system.

Q. You talked about the independent manner—I am quoting from page 91 of the record, in which the Bronx group had attempted to remain, by refusing to affiliate themselves, with any of the other existing councils at that time? A. That should be amended to read the manner in which we did remain, not just attempted. We did remain.

2457

Q. But you say you both attempted to do it and you

S. M. 922

carried it out? A. I amended that to read that we did do it.

Q. You, of course, said, "attempted" at that time? A. That was last Thursday, Mr. Ransom.

2458 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

Q. I have no doubt that you will amend many things by now? A. Oh, I don't think so.

Q. You spoke, when you were on the stand about a meeting of the general council chairmen with representatives of management in July of 1936? A. That's right.

Q. And that was for the purpose of announcement in conference regarding the restoration of the balance of the 8-1/3 percent reduction that had been made in 1934? A. That's right. I can give you the exact announcement.

2459 Q. Well, that reduction was a reduction that had been made at the time the companies had signed the President's re-employment agreement under the N.I.R.A.? A. Let me get that straight—

Q. Reduction had been made in connection with and at the time of the company's signing of the what was called the President's reemployment agreement under the N.I.R.A.? A. Oh, no, no, no. The first restoration had been made then. The reduction had been made much before that. That was the date the first restoration was made. There were two restorations. The reduction had taken place long before that.

2460

S. M. 923

Q. What do you say was the date of the reduction? A. I cannot accurately—maybe I can—May 1st, 1933.

Q. And that reduction—there was a reduction in the hours of work at that time was there not? A. That's right.

Q. There was a reduction in the hours of work without increase in the rate of pay per hours? A. That's right.

Q. So that the net effect was to decrease the amount that came in the pay envelope? A. That's right.

Q. For example, the 38 and 40 hours employees went to 35 generally or, in some instances, 37.50? A. I can only state for the department that I was in, that we worked on a 48 hour week. We went to 44 hours.

Q. You went to 40? A. No, 44.

Q. In your department? A. That's right.

Q. Is that right? A. We later went to 40.

Q. And there was no increase in the rate of pay per hour. That, in effect meant a decrease in the amount of the pay? A. That's right.

2462

Q. Now, when did you say it was first reduced, when do you say was the first reduction which you say took

S. M. 924

place in connection with—or the first restoration which you say took place in connection with signing the President's reemployment agreement? A. April 30, 1934.

Q. And at that time half of the original reduction was restored, you say? A. Approximately a half, 8-1/3 percent.

Q. That would be 4-1/6 percent restored at that time? A. Compute it any way you wish, we won't argue about it.

2463

Q. And this meeting in July of 1936 related to the restoration of the remaining 4-1/6? A. That's right.

Q. Was that restoration made at that time? A. As of August 16, 1936, yes.

Q. It was announced to you in July, 1936, you of the general councils? A. Yes.

Q. And in connection with either of these restorations, was the pay, or were the hours of the work week increased? A. No; they were not.

Q. Were these restorations of the pay, the rate of pay, without increase in hours, one of the things on which you and the other councils had been dealing with

2464 and urging the management? A. I can only speak for the council of the Bronx Gas & Electric Company.

S. M. 925

Q. And certainly as to that company it was? A. Absolutely.

Q. And you felt that your council and the other councils, or at least your council had accomplished something in helping to bring that about? A. No.

2465 Q. You didn't feel that way? A. We didn't kid ourselves about that. We knew we could have been asking for it for two years and if the management had not felt like giving it to us, we wouldn't get it.

Q. Then just whom did you kid about it? A. Nobody. We were honest with your employees.

Q. And you never made any statements, any representations that this was something you had been urging and you were glad it was brought about? A. I personally did not, but there were other members of the general council besides myself.

Q. I see. A. I can't say what they might have said.

Q. I will ask if this letter was written and signed

2466 by you?

(Letter handed to the witness.)

A. Oh, yes, very definitely, yes.

Q. May I have it? A. I have not finished with it yet.

S. M. 926

Q. What was its date? A. July 15, 1936.

Q. That was right, perhaps the day of, or a few days after the meeting of the general— A. I think it was the day after—general council—

Q. —general council with the management? A. That's right.

Q. Regarding the restoration? A. That's right.
Q. Of the balance of the pay? A. Yes, sir.

Judge Ransom: I offer it in evidence.
Mr. Moscovitz: No objection.

(Document referred to received in evidence marked respondent's exhibit No. 9 for identification, Witness Straub.)

Trial Examiner Gates: We will adjourn now.

(Thereupon at 4:10 P. M., adjournment was taken until 10:00 P. M., June 17th, 1937.) 2468

ADJOURNMENT.

2469

2470 S. M. 927

Minutes of Hearing, Held June 17, 1937

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER

of

CONSOLIDATED EDISON COMPANY OF NEW
2471 YORK, INC., and its affiliated companies,
BROOKLYN EDISON COMPANY, INC.,
NEW YORK & QUEENS ELECTRIC LIGHT
& POWER COMPANY,
WESTCHESTER LIGHTING COMPANY,
THE YONKERS ELECTRIC LIGHT AND
POWER COMPANY,
NEW YORK STEAM CORPORATION,
CONSOLIDATED TELEGRAPH & ELEC-
TRICAL SUBWAY COMPANY,
Respondents,

and

UNITED ELECTRICAL AND RADIO WORKERS
2472 OF AMERICA, Affiliated with the COMMIT-
TEE FOR INDUSTRIAL ORGANIZATION.

Case No.
II-C 224

14 Vesey Street,
New York, N. Y.,
June 17, 1937.

The above-entitled matter came on for hearing pursuant to adjournment taken June 16, 1937, at 10 o'clock A. M.

Before:

ROBERT M. GATES, Trial Examiner.

Harold J. Straub (Recalled)—For N.L.R.B.—Cross 2473

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National

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Labor Relations Board.

WILL MASLOW, Esq., Attorney for the National Labor Relations Board.

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers, Local 1212. 2474

Messrs. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City, N. Y. (By William L. Ransom, Jacob H. Goetz and Pincus M. Berkson, of counsel), appearing specially for the respondent companies, reserving all objections to jurisdiction.

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PROCEEDINGS

Trial Examiner Gates: Are you ready, Mr. Moscovitz? 2475

Mr. Moscovitz: Yes, sir.

HAROLD J. STRAUB, recalled, and testified further as follows:

Cross-Examination:

Q. (By Mr. Ransom) Mr. Straub, you testified on direct examination concerning a mimeographed circular of which you were given copies at the office of Mr. Rosenquest, with respect to a request for a vote on a plan of electing representatives for collective bargain-

2476 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

ing. I show you this document and ask you if that is a copy of the mimeographed document to which you referred. (Handing paper witness.) A. I believe it is, yes. Yes, that's it.

Judge Ransom: May it be identified, please?

(Document referred to was marked Respondents' Exhibit 9 for identification, Witness Straub.)

2477 Q. (By Judge Ransom). Respondents' Exhibit No. 9 for identification is a communication to the employees of the Bronx Gas & Electric Company from E. H. Rosenquest, president, and to that is amended a form of request for vote which is followed by blank spaces for signature. A. Yes.

Judge Ransom: I offer it in evidence.
Mr. Moscovitz: No objection.

S. M. 930

(Document previously marked Respondents' Exhibit No. 9 received in evidence as Respondents' Exhibit 9, Witness Straub.)

2478 Q. (By Judge Ransom) Mr. Straub, you identified yesterday Respondents' Exhibit 8 for identification, as a copy of the employees representation plan of the Bronx Gas & Electric Company in pamphlet form which bore the date April 11, 1934. A. Yes.

Q. I show you a printed communication to the employees of the Bronx Gas & Electric Company, dated April 11, 1934, and ask you whether you recognize that as the letter with which the plan printed as of the same date and marked as Exhibit No. 8 for identification was transmitted to the employees of the company? A. Would you mind putting that question again?

 2479

Q. I say, is that a copy of the letter with which the plan was submitted to the employees of the company? A. I don't recall whether this letter accompanied the copy of the plan to the employees or not; but I do recall having read this letter.

Q. You recognize this as a letter which was received by you for the employees of the Bronx Gas & Electric Company? A. That's right.

Judge Ransom: I offer it in evidence.

Mr. Moscovitz: No objection. 2480

Trial Examiner Gates: It is admitted.

S. M. 931

(Document referred to received in evidence as Respondents' Exhibit 10, Witness Straub.)

Judge Ransom: Now, I offer in evidence Respondents' Exhibit 8 for identification, which is the plan which went with the letter in the form in which it was submitted to the company as shown in the text of it, submitted to the employees as shown in the text of the letter.

Mr. Moscovitz: No objection. 2481

Trial Examiner Gates: It may be admitted.

(Document previously marked Respondents' Exhibit 8 for identification now received in evidence, Witness Straub.)

Q. (By Mr. Ransom) I show you a copy of a printed letter on the letterhead of Bronx Gas & Electric Company, dated April 11, 1934, and ask you whether you recognize that as a communication which you saw at the time.

(Document passed to the witness.)

2482 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

A. I never saw that letter.

Judge Ransom: I ask to have it marked for identification.

(Document referred to marked Respondents' Exhibit 11 for identification, Witness Straub.)

Q. (By Mr. Ransom) You said yesterday, as you recalled it, the employees first elected by the ballot tellers to conduct this election of April 17, 1934; do you recog-
2483 nize that as a copy of the form of ballot which was used by the employees in electing the tellers to conduct

S. M. 932

the vote of April 17, 1934?

(Document was passed to the witness.)

A. Yes, I believe that's a copy of the ballot.

Judge Ransom: I offer it in evidence.
Mr. Moscovitz: No objection.

(Document referred to received in evidence and marked Respondents' Exhibit 12, Witness
2484 Straub.)

Q. (By Mr. Ransom) You said that at the voting on April 17, 1934, the employees of the company voted upon two questions or propositions; may I ask you if you recognize that as a copy of the form of ballot which was used by the employees in that election?

(Document passed to the witness.)

A. I believe it is.

Judge Ransom: I offer it in evidence.
Mr. Moscovitz: No objection.
Trial Examiner Gates: Admitted.

2485

(Document referred to received in evidence and marked Respondents' Exhibit 13, Witness Straub.)

Q. (By Mr. Ransom) Referring to the ballot used on April 17, 1934, for the vote of the employees on the two submitted propositions; do you recall whether the vote on the first proposition of the employees was 310 for and 3 against? A. I can't recall exactly, I know it was an overwhelming majority, but I do not recall.

S. M. 933

2486

Q. Do you recall if the vote on proposition 2 was 299 for and 12 against? A. I don't recall the exact number.

Q. Well, do you recall—are they your recollection of the approximate figures? A. Yes, the approximate figures, approximately.

Q. And you spoke about the form of enrollment of employees to vote and take part in the nomination or election of the representatives; I ask you if you recognize that as a form which was used by the employees under the representation plan in the enrollment of those who were entitled to vote in subsequent elections after the adoption of the plan?

2487

(Document was passed to the witness.)

A. Will you repeat that?

Q. I say, do you recognize that as the form which was used by the employees in their enrollment as persons entitled to vote in subsequent elections under the plan? A. As I recall it, this was a form that was submitted to the employees in the various departments after the first election or, rather, the balloting on the approval of the plan. I distinctly recall employees' job

2488 *Harold J. Straub (Recalled)—For N.L.R.B.—Cross*

specifications, or, rather, their payroll specifications, being on the form. I am sure this is it, or none, and the people in the various departments objected to sending it back without signing it due to the fact that they

S. M. 934

weren't asked about it——

Judge Ransom: Well, I ask that that be marked for identification.

2489

(Document referred to marked Respondents' Exhibit 14 for identification, Witness Straub.)

Q. (By Mr. Ransom) You spoke on direct examination again yesterday about the merger of the Bronx Gas & Electric Company into the Consolidated Edison Company by reason of which you ceased to deal with the management committee or the secretary with whom you had formerly dealt as chairman of the general council of the Bronx Gas & Electric Company; did you, thereafter, send this letter to Mr. Prezzano, who is president of the Westchester Lighting Company and also the Bronx Gas & Electric Company?

2490

(Document passed to the witness.)

A. Yes, yes, I believe I did, yes, I sent that.

Q. In any event, that's your signature? A. That's right.

Q. And the statements there are true? A. That's right.

Q. And was that sent about or shortly after the first of January, 1937? A. I can't recall the exact date it was sent, I do know it was sent.

Harold J. Straub (Recalled)—For N.L.R.B.—Redirect 2491

S. M. 935

Q. Was it after? A. I received a reply to it.

Q. It was after you were informed of the merger and after the merger had begun to go into effect? A. That's right.

Q. After you had ceased to deal with the secretary of the management committee at Mt. Vernon? A. We had not entirely ceased to deal with him, no, it was new members that we picked up later through him.

Q. You were still clearing up the matters that were 2492
still pending with that management committee? A. Yes.

Judge Ransom: I offer the letter in evidence.

Mr. Moscovitz: No objection.

Trial Examiner Gates: Admitted.

(Document referred to received in evidence and marked Respondents' Exhibit 15, Witness Straub.)

Judge Ransom: That is all.

Mr. Moscovitz: Have you finished with Mr. Straub? 2493

Judge Ransom: Yes.

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Mr. Straub, Respondents' Exhibit 8, which is the employees representation plan, is a plan which was submitted to the employees by the company. Is that right? A. That is correct.

S. M. 936

Q. And which the employees had no voice in drafting. Is that right?

Judge Ransom: Objected to as contrary to any fact. The witness does not know.

Trial Examiner Gates: He may answer.

Judge Ransom: The letter of transmittal states the circumstances under which it was prepared.

Trial Examiner Gates: He may answer it.

Judge Ransom: Exception.

A. The employees had no voice in drafting that.
2495 That was written entirely by the management of the company and presented to their employees.

Q. (By Mr. Moscovitz) And is Respondents' Exhibit 10 the notice or letter which accompanied Respondents' Exhibit No. 8? A. I think I said before that I don't recall this letter accompanying that. I do recall having read the letter, however.

Q. In the letter, in the first paragraph, there is a statement that a majority of the employees of this company had indicated a desire to initiate a plan of organization within this company for employee representation for collective bargaining. Reference to the employees
2496 of this company is the company by which you were employed. Is that right? A. Bronx Gas & Electric Com-

pany, yes.

Q. And were you part of any group, if you know, of employees of the company, who indicated to the management in any way a desire to be organized for collective bargaining under a plan? A. I was a member of a group, I was one of a group, but certainly we did not represent a majority of the employees. At the time we contacted the management, we were sent up there by our department supervisors.

Q. And was that at a time prior to April 11, 1934? A. I believe it was, yes.

Q. And was it your idea as a member of the contact group to see the company regarding the plan; or were you simply instructed by some one to go see the company regarding the plan? A. I was simply instructed to go see some one, but not regarding the plan. We had no idea what it was all about.

Q. Who instructed you to go? A. The general foreman in our department, the general superintendent of our department, at that time, a Mr. Fitzsimmons. Incidentally, he is now dead. 2498

Q. Did you learn after you went, at that time, that it was for the purpose of doing something about a plan? A. Well, from what Mr. Rosenquest told us, we learned that.

Q. You saw him? A. We spoke to a Mr. Wilder,

S. M. 938

an executive vice-president of the Westchester Lighting Company and the Bronx Gas, and so forth.

Q. And what did you learn when you saw them? A. After speaking to Mr. Wilder for a few minutes, he brought us in to Mr. Rosenquest's office, and he introduced each one of us to Mr. Rosenquest. Mr. Rosenquest said a few words of more or less greeting, and then he said, "I understand you people have been sent up here by the employees to set up a means of collective bargaining." 2499

We knew nothing about that. That was the first we heard of it.

Q. Did he have a tentative plan at that time? A. At that time we saw no copy of the plan. We did, however, see some letter, some correspondence he had there. I couldn't recall exactly what it was.

Q. Was it Respondents' Exhibit No. 9, which you saw at that time? A. I couldn't accurately say. However, I believe it was.

Q. Now, in Respondents' Exhibit 9, third paragraph, there is a statement as follows:- "If a majority of the employees in this company indicate a desire for such organization in this company by signing the request below, a special election will be held in the near future, at which such a plan will be submitted, opportunity given for the submission of other plans," and so forth.

2501

S. M. 939

Now, was there any discussion with Mr. Rosenquest regarding the manner in which the request for a vote which appears on the bottom of Respondents' Exhibit 9 was to be brought to the attention of the employees? A. As far as I can recall, the discussion was that each of the three men present was decided upon right there, as to what parts of the Bronx Gas & Electric Company each man would cover in attempting to get the employees to sign this petition or request.

Q. And who decided which parts of the company the
2502 three men would cover? A. It was decided by mutual consent between the management and ourselves. Inasmuch as I represented no one at that time, I was a lineman, and therefore familiar and known to the people of the line department, it was decided I should go around and contact all the linemen, helpers and chauffeurs, and get them to sign the petition.

Q. Yes. A. A Mr. Dunkel, I believe, in the test department at that time, was supposed to circulate the petition among the employees at 1555 Purdy Street, and Mr. Newport, from 43 Westchester Square, was to circulate the same type of petition among the employees at that location, 43 Westchester Square.

Q. Were they the two men who were with you at that time? A. Yes.

S. M. 940

Q. Who prepared the request for vote which was to be submitted to the employees? A. The management gave this request to us.

Q. Did you have anything to do in the drafting of it? A. No, sir, absolutely not.

Q. Or in suggestions which were incorporated in it? A. Absolutely not. 2504

Q. Did you then simply take it and distribute it in accordance with instructions given to you by the management? A. We did not distribute it. We simply retained it ourselves and got each employee to sign it.

Q. Was that in accordance with instructions by the management? A. It was.

Q. And was that done during your regular working hours? A. It was.

Q. While the other men also were at work? A. That's right.

Q. For which you were paid? A. That's right.

Q. Was that the start of your opportunity to be employed by the company without working on a line? A. I don't quite get the question. 2505

Q. Well, did that start, then, your employment activity which permitted you from that time on to work for the company but not in your regular job as a line-

S. M. 941

man? A. Yes, that was the beginning.

Q. Respondents' Exhibit 11, which has been marked for identification, Mr. Straub, as I recall, you have no recollection of that?

2506 *Harold J. Straub (Recalled)—For N.L.R.B.—Redirect*

(Respondents' Exhibit 11 passed to the witness.)

A. That's right, I never saw this before.

Judge Ransom: You are referring now to the memorandum for supervisory employees?

Mr. Moscovitz: Yes.

Judge Ransom: I take it this witness probably did not get one.

2507 Q. (By Mr. Moscovitz) Respondents' Exhibit 12, Mr. Straub, which is a ballot for tellers to act in the election to be held April 17, 1934, specifying certain departments involved with instructions for the casting of the ballots, you testified that you had seen such a ballot, is that right? A. Yes, I have.

Q. Was that ballot the one which was presented to the employees after the petitions were signed so that they might indicate your choice? A. Yes, I believe it was, there is some confusion in my mind, there were several elections, several methods of balloting at that time.

2508 Q. Well, now, what method of balloting was that, is it any different than you might consider Respondents'

S. M. 942

Exhibit 12 and Respondents' Exhibit 13 at the same time, Respondents' Exhibit 15, rather, being a ballot and will you consider those and explain each one in the light of the other, if you can?

Judge Ransom: The witness testified yesterday that the tellers were chosen by the employees first.

The Witness: I don't believe Mr. Ransom's statement is correct.

Judge Ransom: The record speaks for itself.

The Witness: I stated yesterday the original board of tellers were selected by the board of supervisors of the various departments and that those elections, conducted by those tellers, then the board of tellers was chosen to conduct this election. These were both submitted at the same time.

Q. (By Mr. Moscovitz) By whom? A. By the management of the company, incidentally, the board of 2510
tellers supervising this election was chosen by certain department heads, not selected by employees.

Judge Ransom: You are referring now to the election of tellers?

The Witness: I am referring to the election of tellers and voting on this proposition, they were both held at the same time.

S. M. 943

Q. (By Mr. Moscovitz) And in either case did the employees or you three designated representatives have any voice in the drafting of these ballots? A. Abso- 2511
lutely not.

Q. And they, too, were given to you by management for submission to the employees? A. They were given to the board of tellers that had been set up in each department to conduct that election, set up by the management.

Q. Yes, were you a member of any of the boards? A. I was later elected a member of the board of tellers on that ballot.

Q. Yes, I see. A. But I was not——

Q. Go ahead. A. But that board of tellers was elected and acted only as a temporary board of tellers.

2512 *Harold J. Straub (Recalled)—For N.L.R.B.—Redirect*

Q. Respondents' Exhibit 14 for identification, you are not clear in your own mind as to all of the pages in that exhibit? A. I don't ever recall having seen any one of the particular departments in which I was working have anything like this sent.

Q. You have no recollection? A. No, sir, there was a list sent similar to this, as I explained, there was some controversy about it, but I am sure this

S. M. 944

2513 did not accompany it.

Judge Ransom: What you refer to is a copy of the plan annexed to the list, is that right?

The Witness: That's right.

Q. (By Mr. Moscovitz) Now, these exhibits which you have been looking at, including Respondents' Exhibit 8, which is the plan, are they, so far as you recall, the complete list of papers brought to your attention during the period of time that the plan was being considered and voted upon? A. As far as I recall, yes.

Q. And it was all preliminary to the actual voting
2514 upon the plan by the employees? A. They voted on accepting of the plan in this, that is included in that, in those papers.

Q. That's included in the whole group? A. That's right.

Q. Was there any instance during that period of time where you or the other two men had any opportunity to voice any suggestion for consideration in this plan? A. No, absolutely not.

Q. So that it is, so far as you know, a plan which was drafted considered and suggested by management, after which it was turned over to you and the other employees, is that right? A. That's right.

S. M. 945

Q. Respondents' Exhibit 15, Mr. Straub, is the letter signed by you and sent to Mr. Prezzano, the president of the Westchester Lighting Company, as I recall your testimony, some time in January, 1936, is that correct? A. That's correct.

Q. Or 1937? A. I believe 1937.

Q. All right. Do you recall whether or not you received a reply? A. I did.

Q. Is this the reply? 2516

(Document passed to the witness.)

A. Yes, that's correct, this is the reply to that letter.

Mr. Moscovitz: I offer that.

Judge Ransom: No objection.

Trial Examiner Gates: Admitted.

(Document referred to received in evidence and marked Board's Exhibit 12, Witness Straub.)

Q. (By Mr. Moscovitz) It appears from these letters, Respondents' Exhibit 15 and Board Exhibit 12, that there was good feeling between yourself and management, is that right? A. It certainly was. 2517

Q. Which still exists, is that right? A. I hope so,

S. M. 946

although I doubt it.

Q. In your reference in Respondents' Exhibit 15 to Mr. Wilder, that is the gentleman about whom you have already testified? A. Stewart Wilder, vice-president of Westchester Lighting Company.

Judge Ransom: And of the Bronx Company?

The Witness: Oh, yes.

Q. (By Mr. Moscovitz) In your reference to asso-

2518 *Harold J. Straub (Recalled)—For N.L.R.B.—Redirect*

ciation with Mr. Carrol in Respondents' Exhibit 15, who is he? A. Secretary of the management committee of the Bronx Gas & Electric Company.

Q. And are both those gentlemen, or are both these gents, gentlemen with whom you had worked during the period of time that you were active in your plan activity? A. I wouldn't say we had worked with them. We had contacted them on various occasions, certainly never worked with them. I mean, they were not fellow employees. We didn't work side by side.

2519 Q. Was this letter addressed to Mr. Prezzano, Respondents' Exhibit 15, sent in your individual capacity, or at the request of the employees in your department? A. The employees had nothing whatever to do with it. It was a personal letter, written by myself, entirely on my own free will. The employees or no one had anything to do with it other than myself.

S. M. 947

Q. What was the reason for the sending of it at that time? A. I really meant it. Our relations had been very cordial. Mr. Carrol had been at every time a gentlemen. Any time I had occasion to talk to him,

2520 he was a gentleman, and I admired and respected the president, the vice-president and the secretary of the Bronx Gas & Electric Company, and I felt no hesitancy in stating as much.

Q. Are they still employed in this company? A. The Westchester Lighting Company, I believe.

Q. Yes. A. Yes, they are. The Bronx Gas & Electric Company is no longer in existence.

Q. But they still are with the Westchester Lighting Company? A. They always were.

Q. They still are? A. Yes.

Q. Yesterday there was introduced, as I recall, a letter to Mr. Prezzano dated July 15, 1936, signed by

yourself as chairman of the third general council, in which you thanked him and extended your appreciation as well to Mr. Wilder for his efforts in securing full restoration of the reduction in pay which resulted in a partial reduction in working hours, which became effective on May 1, 1933, and which was to be restored August 16, 1936. Do you recall that? A. I do.

S. M. 948

Q. Was that letter sent in your individual capacity, or at the request of the employees whom you repre- 2522
sented? A. At the request of the members of the general council.

Q. Yes. And can you tell us whether there is any other reason which does not appear on the face of the letter which prompted the sending of that letter? A. Why, I believe it goes back to what I said. I realized that we had nothing to do, as well as every other member in the council realized, we could have attempted to get that restoration for 50 years, we had nothing to do in order to get it, no way of getting it. We had no organization behind us. It was a magnanimous gesture on the part of the management and we realized 2523
that. We had nothing to do with it. We realized that Mr. Wilder and Mr. Prezzano must have been instrumental in our behalf with the board of directors of the Consolidated Edison Company in having it restored to us, and we thanked them in accordance with those ideas.

Mr. Moscovitz: That's all.

RECROSS EXAMINATION:

Q. (By Judge Ransom) You had requested them to do what they could to bring about the restoration? A. What is that?

2524 *Harold J. Straub (Recalled)—For N.L.R.B.—Recross*

Q. Your council had asked them to do what they could to bring about the restoration? A. As well as

S. M. 949

I believe every other council that had been in existence prior to that.

Q. Did you sign Respondents' Exhibit No. 9? A. I believe I did.

Q. And you, with the two other men whom you
2525 mentioned, obtained signatures to it? A. Not to the one that I signed.

Q. Well, the same form? A. I believe they signed it. I assume as much. I don't know.

Q. They obtained signatures? A. That's right.

Q. Do you know how many signed in the whole company among the entire body of employees? A. I know only how many signed for myself.

Q. Well, how many signed for you? A. All that I contacted, everybody I had seen. I don't know who signed for the others.

Q. Do you know whether any others than the two men whom you have mentioned and yourself circulated
2526 this request for vote? A. I don't know of any others, no.

Q. You don't know, then, whether they did or did not? A. I imagine that they did not.

Q. But that is a pure supposition on your part? A. That's right.

S. M. 950

Q. That's all.

Examination by Trial Examiner Gates:

Q. (By the Trial Examiner) Had the plan been submitted to the employees before they voted on it, the

 2527

first balloting? A. I cannot recall ever having seen a copy of the plan before it was voted upon.

Judge Ransom: You mean before it was sent out to be voted upon?

The Witness: I don't get that.

Judge Ransom: Before it was sent out to be voted upon?

The Witness: The ballot was submitted to us to vote as to whether or not we wanted a definite plan. 2528

Judge Ransom: You say the first time you ever saw it was the day of the voting?

The Witness: I don't recall even having seen it then.

Q. (By the Trial Examiner) Can you state when the balloting was with reference to whether it preceded or followed either one or both of these letters, Respondent's Exhibit 9 and Respondent's Exhibit 10? A. The balloting took place, I believe, after both of these letters.

Q. You had not seen the plan at all? A. I don't recall having seen it, not until after the balloting. 2529

Q. Mr. Carlisle's precise words to the meeting on

S. M. 951

April 20th announcing recognition of the I.B.E.W., can you recall that? A. What did you say, sir?

Q. Can you recall Mr. Carlisle's precise words to the meeting on April 20th, announcing recognition of the I.B.E.W.? A. I believe I can.

Q. What were they? A. Mr. Carlisle opened the meeting of this group by stating, telling the employees of the surprise that the electric industry had received

2530 *Harold J. Straub (Recalled)—For N.L.R.B.—Recross*

as well as all other industry, in the Wagner Act being upheld.

Q. Just as to recognition. A. He said that, "I have received a letter from a Mr. Dan Tracy, international president of the International Brotherhood of Electrical Workers, asking me to recognize that organization as the bargaining body for the employees of the Consolidated Edison Company, and I intend to answer that letter and grant that recognition."

2531 Mr. Moscovitz: You have fixed that date, haven't you?

The Witness: Tuesday, April 20, 1937.

Q. (By Trial Examiner Gates) In your direct testimony, you stated that somebody offered you an office in local B-829. You did not state who. Can you at this time state who made such an offer to you? A. Yes, Patrick McGrath, the present business manager of local B-829, offered me the position as chairman of

S. M. 952

the executive board of B-829, if I would go along with
2532 him in his attempts to become business manager of Local B-829.

S. M. 953

Q. That is the only individual?, A. That is all. I was nominated by all of these charter members present at that meeting as a member of the executive board and I declined that nomination.

Q. I think you may have fixed it later in your testimony, but I am not sure; in any event, I would like to have you state the date, the date that you first met with Tracy, Mr. Dan Tracy, president of the International Brotherhood. A. Friday, April 23rd, 1937.

Q. Is that the only meeting you had with him? A. That's the only one I had, yes.

Trial Examiner Gates: That is all.

(Witness excused.)

Mr. Moscovitz: I will call Mr. Joy.

ARTHUR CURRIE JOY, called as a witness for the National Labor Relations Board, being first duly sworn, 2534 testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) What is your name? A. Arthur Currie Joy.

Q. Where do you live? A. 137-61 Holly Avenue, Flushing, New York.

Q. By whom are you employed at the present time? A. Consolidated Edison Company of New York.

Q. At what address? A. 4 Irving Place.

S. M. 954 2535

Q. In what capacity? A. Engineer in the electrical engineering department.

Q. What did you say you were? A. Junior engineer in the electrical engineering department.

Q. What are your duties as junior engineer? A. Preparation of specifications, general studies pertaining to cables, high voltage, low voltage cables and related equipment and accessories.

Q. How long have you been so employed? A. I have been in the company since July 1st, 1928, the first nine months in which I was with the test bureau, in general

2536 *Arthur Currie Joy—For N.L.R.B.—Direct*

testing, and after that I have been in the engineering department in this type or similar work.

Q. And was the particular group with whom you worked known as, in so far as division or department classification is concerned, it was known as what? A. The cable division, outside plant bureau, electrical engineering department.

Q. I see. And how many men are in your division? A. I think there are 18 but I am not sure of that, it is around 19, or 20 or 21, something of that nature.

2537 Q. Are you a member at the present time of any labor organization? A. I am a member of the Independent Gas and Electric Union.

S. M. 955

Q. How long have you been a member of that union? A. I don't recall the exact date of the application of membership, the union was formed approximately April 29th, I believe, it was the beginning of its formation, I have been associated with it since its inception.

Q. That is April 29, 1937? A. 1937.

Q. 1937? A. Yes.

2538 Q. Have you been associated with it in an official capacity or simply as a member? A. I am a member of the temporary executive board.

Q. And does it have—who are the officers of the organization? A. The officers at present are Mr. John Schock, temporary chairman, Mr. Harry Crowell, temporary vice chairman, and Mr. Edward Gideon, financial secretary, temporary financial secretary.

Q. Yes, and the officers are all employees of the company? A. They are.

Q. Of the Consolidated Edison Company? A. Yes.

Q. And do you at the present time operate as an independent labor organization? A. Absolutely.

2539

Q. You have no national affiliation at this point, do you? A. No.

S. M. 956

Q. Is your organization one which, so far, is limited to the operations of the Consolidated Edison System? A. Yes.

Q. And when I say "system", I mean not alone the Consolidated Edison Company but its affiliates and divisions and subsidiaries? A. The Consolidated Edison Company of Brooklyn, Edison Company of New York and Queens Electric Light and Power Company, Westchester Lighting, et cetera.

2540

Q. Yes, but you did not at this time have membership elsewhere? A. No.

Q. Now, before the starting of this organization in April, 1937, were you a member of any other labor organization? A. I was a member of the employees representative association of the New York Edison Company.

Q. Yes, and how long were you a member of that Association? A. I was a member since its inception which I believe was 1932, I don't recall the date.

2541

Q. 1932 or '33, around that sometime, is that right?

Judge Ransom: You mean 1933?

Mr. Moscovitz: Yes, 1933.

Judge Ransom: The end of 1933?

The Witness: Yes.

Q. (By Mr. Moscovitz) And while you were a member of the plan were you a member of any other labor

S. M. 957

organization? A. No.

Q. All right, and at the present time you are a member of no labor organization outside of the Independent Union? A. That's right.

Q. Does your independent Union have a local or is it simply known by the name which you have already given? A. It is known by the name which I have stated, that it is one organization for the whole system.

Q. And is the purpose of your organization to consider questions pertaining to employees for negotiation with management and also to take steps to improve
2543 working conditions of employees? A. Certainly, the purposes are the same as any other labor organizations, we merely feel that national affiliation is not desirable.

Q. Can you tell me how soon after the employee representation plan was disbanded your organization came into existence? A. That's a hard question to answer because the employees representative association has never officially disbanded, so far as I know, it just died, so there was no definite time.

Q. Was it dying in about the time your organization came into existence? A. It began dying very rapidly on April 20th, 1937.

2544 Q. Now, do you have—withdraw that. Now, do I understand your testimony to be that you had membership in the companies which you have already listed?

S. M. 958

A. That is correct.

Q. Now, what are your duties as an officer of this organization? A. I am not an officer, except as a member of the executive, temporary executive board.

Q. I mean as a member of the board? A. The duties of that board are the duties of any corresponding organization, to decide upon the policies and to see that they are carried out.

2545

Q. Now, after you became a member of the organization, were you requested to become a member of any other organization? A. I can't say that any such request was made after I was a member of the independent organization, such requests as were made, I don't recall the exact—I don't recall just exactly how, well, it was between the two dates, but I don't know the dates on which the requests were made.

Q. Before you became a member of the independent union and during the period of time that the Employee Representation Plan was dying, do you recall whether or not any steps were taken by supervisory employees within your company to secure membership for the I.B.E.W.?

2546

Judge Ransom: Objected to as altogether vague. Proof of that sort must necessarily relate to definite persons and definite time.

Trial Examiner Gates: He may answer it.

S. M. 959

A. Would you repeat the question again please?

Q. (By Mr. Moscovitz) Immediately before you became a member of the independent union, do you recall whether or not any supervisory employee within your company attempted to secure membership for the I.B.E.W.? A. Yes, very definitely so. Is it permissible to refer to notes?

2547

Q. Yes, please do. A. On Friday, April 23rd.

Q. Is that 1937? A. 1937, division engineers in the outside plant bureau distributed membership cards for the I.B.E.W.

Q. Do you know who they were? A. I can name them definitely.

Q. Will you do so? A. W. F. Butcher, division en-

gineer of the distribution planning division; Mr. T. D. Reimers, division engineer of the distribution apparatus division.

Q. Yes. A. Mr. H. C. Kotchendorfer, I believe the initials are correct, division engineer of the subway design division, and in my own division two group leaders did it.

Q. Who were they? A. Mr. C. T. Hatcher and Mr. J. M. Comley.

2549 Judge Ransom: What is the last name?

S. M. 960

The Witness: Comley, C-o-m-l-y.

Q. (By Mr. Moscovitz) Mr. Butcher, Mr. Reimers and Mr. Kotchendorfer hold the same grade jobs, don't they? A. That is correct.

Q. And what kind of work do they do? A. Mr. Butcher has the responsibility for the general planning of the distribution system.

Q. What is Mr. Reimers job? A. Mr. Reimers has the responsibility for the development and operation,
2550 maintenance of the distribution apparatus on the electric system.

Q. And Mr. Kotchendorfer? A. Mr. Kotchendorfer has the responsibility for the design of the underground conduit system, the manholes, vaults, and so forth.

Q. Do they all have employees who work for them? A. Yes, sir.

Q. Do you know in what number? A. Mr. Butcher, I believe, has approximately 12.

Q. Yes. A. Mr. Reimers has possibly 15 to 18.

Q. Yes. A. Mr. Kotchendorfer has approximately 22, I believe. I am not positive of those figures.

Q. And are there any bosses in between Mr. Butcher and the 12 men? A. No.

S. M. 961

Q. Or foremen? A. No.

Q. Assistants? A. No.

Q. Or between the 15 or 18 men and Mr. Reimers? A. Only possibly unofficially, I mean some men act unofficially as group heads, but I am not positive that they do in that particular division.

Q. I see, between the 22 men and Mr. Kotchendorfer? A. Yes, a certain group of men report indirectly through one of his assistant engineers who, in turn, report to him. They are the draftsmen that report to him. 2552

Q. Does Mr. Kotchendorfer have assistant engineers working under him? A. Yes.

Q. Are they over the 22 men? A. As I say, one of them acts as the head of the 12 or 13 draftsmen in the group.

Q. And does Mr. Butcher have an assistant engineer? A. There are a number of assistant engineers. The title, assistant engineer, is one that is set up according to the pay scale. There are a number of them in all three divisions. Are these three men who work on monthly or weekly payroll? A. Monthly.

2553

S. M. 962

Q. And what do the regular employees work on, monthly or weekly? A. Most of them weekly.

Q. Is there a distinction between, to your knowledge, men who work on weekly and monthly payroll? A. A distinction in what way?

Q. In so far as their classification in operation? Are monthly workers considered as supervisory employees? A. No, not necessarily.

Q. What are they considered as, if you know, or why is the distinction in the time within which they are paid?

2554 *Arthur Currie Joy—For N.L.R.B.—Direct*

A. As to why the distinction, I don't know. There are certain differences in their status in the company. The monthly employees receive no overtime, if they work overtime. They are paid so much for the month and they work whatever is required of them. They are also not eligible for certain of the benefits that are provided such as the sick benefit fund.

Q. Anything else? A. That is all I know of offhand.

Q. Are all supervisory employees on monthly payroll? A. In my own organization, yes.

2555 Q. And are all non-supervisory employees on weekly payroll? A. No.

Q. They are not? A. There are a number of monthly

S. M. 963

paid engineers in there who are not in a supervisory capacity at all.

Q. Do you classify Butcher, Reimers and Kotchendorfer among them? A. They are division heads. They are supervisory, of course.

Q. Who comes immediately above these three men in rank? A. The bureau head and the assistant bureau

2556 head.

Q. Well, would the assistant bureau head be next and then the bureau head? A. Yes.

Q. Do these three men report to the same assistant bureau head and the same bureau head? A. Yes.

Q. Who is the assistant bureau head? A. Mr. J. A. Brooks.

Q. Who is the bureau head? A. Mr. Milney.

Q. Is there any one above the bureau head? A. Of course, the department head and the assistant department head are above the bureau heads.

Q. Who is the assistant department head? A. Mr. C. W. Franklyn.

Q. And the department head? A. Mr. J. F. Fairman.

Q. And when you get to the department head, you are at the top of the heap insofar as your department is concerned? A. Then you go to the vice-president.

S. M. 964

Q. And then the president of the company? A. Yes.

Q. Now, do you work for any one of the three men whom you have named? A. No, not one of the division engineers. In my own division, the cards were handed out by the sub-group heads that I named. 2558

Q. But do you work for either Mr. Butcher, Mr. Reimers or Mr. Kotchendorfer? A. No.

Q. Do you work for any group which reports to any of those three? A. No.

Q. What does Mr. Hatcher do? A. Mr. Hatcher is a leader of a group in the cable division which has general responsibilities that I outlined as among my own duties, the preparation of specifications and the responsibility for the proper operation of the cable system.

Q. Is he your leader? A. Yes.

Q. How many men does he have working under him? A. Six I believe it is. 2559

Q. Six? A. Yes, sir.

S. M. 965

Q. Is he on a weekly or a monthly payroll? A. Monthly.

Q. And do you men report directly to him? A. Yes.

Q. And receive your instructions from him? A. Yes.

Q. And are you responsible directly to him? A. In general, yes.

Q. And do you have any other boss or person immediately above you, outside of Mr. Hatcher? A. Noth-

2560 ing officially, of course, the men who are seniors in experience are usually consulted first.

Q. I see. And who is immediately above Mr. Hatcher? A. Mr. E. R. Thomas.

Q. What is his job? A. Division engineer of the cable division.

Q. And who is above him? A. The bureau head and the assistant, Mr. Brooks and Mr. Comley.

Q. So there is one step between Mr. Hatcher and the assistant bureau head? A. Yes.

2561 Q. How many men does Mr. Comley have working with him? A. Approximately seven in the personnel.

Q. Is that the same kind of work that is done by Mr. Hatcher's group? A. Not exactly, he has the statistical

S. M. 966

group which keeps the statistical records of the cable system, and they also handle some for other organizations, and they also have what is known as the technical group which handles quite a lot of the mathematical portion of the cable studies.

Q. And his group are responsible to him, is that

2562 right? A. Yes.

Q. He gives them instructions? A. That is correct.

Q. And plans out their work, is that correct? A. That's right.

Q. And do you then go from Mr. Comley to the assistant bureau head? A. No, the division engineer, Mr. Thomas.

Q. And then to the assistant bureau head? A. That's right.

Q. What date was it when you say these men were engaged in the distribution of I.B.E.W. cards? A. Friday, April 23rd.

Q. Do you know what time it was? A. No, I don't.

Q. All right, it was— A. It was in the afternoon, pardon me.

Q. Was it during working hours? A. Yes.

S. M. 967

Q. While they were—withdraw that please. Now, did you say that Mr. Hatcher was doing it within your group? A. Yes.

Q. Did you see him do it? A. Yes, I was at the table with him.

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Q. Did you see what he did? A. Well, I didn't hear the entire discussion but the general idea was that the company had agreed to recognize the I.B.E.W. and apparently they wanted the employees to join it and here were the application cards and they wanted them back the following Monday.

Q. Did he hand you one? A. No, he was short in quantity and I did not get mine.

Q. Did he hand as many as he had out to his men? A. Yes, sir.

Q. How many did he have, do you recall? A. Approximately five or six at that time, I don't recall exactly, incidentally I was mistaken a while ago as to 2565 the number he had, it was approximately eight or ten in his group instead of six.

Q. All right. And did he speak frequently to you about it or to the groups? A. To the group.

Q. Do you recall whether or not any of the men signed? A. No one signed at that time.

S. M. 968

Q. Do you recall whether or not he made any other statement to the men at that time? A. He undoubtedly did, I don't recall the exact wording of any of them

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but I entered into some discussion on the situation with him.

Q. And what was your discussion? A. My discussion was that the thing, the organization that they were trying to hand us was a dictatorial organization, that there was no reason whatsoever for any self-respecting employee to sign, and the general answer was, "Well, it is better than the C.I.O., isn't it?"

And I told him to get copies of the constitution of the I.B.E.W. and look it over and see if it was not
2567 better than anything.

Q. Now, at that time were you a member of your independent union? A. No, it had not been officially formed at that time.

Q. And was that the first time that it was brought to your attention that persons were circulating I.B.E.W. cards in the plant? A. It was not the first time, it was brought to my attention, no, it was the first hand evidence that I had of it.

Q. When was the first time that it was brought to your attention? A. On April 21st, I believe.

2568 S. M. 969

Q. Of the same year? A. 1937, yes, at which time there was a rather large meeting in the auditorium of quite a number of members of various councils of the Employees Representative Association.

Word was received at that time that certain foremen were going around to their men in the field and saying the E.R.A. is dead, here is the thing to sign for now.

Q. When you say "Word was received—", do you mean it was so reported to the council? A. Yes.

Q. Were you there? A. I was there.

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Q. What was the purpose of the meeting? A. The purpose of the meeting was generally to discuss the action taken by the company in recognizing the I.B.E.W. and to see what could be done about it.

Q. How many men attended that meeting? A. Oh, I don't know, the auditorium was pretty well filled, I don't know the capacity of it at all, I would say there was possibly a hundred people there.

Q. And was that during working hours? A. Yes, sir.

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Q. Who made the arrangements for the meeting, do you know? A. I presume the chairman of the general council of the E.R.A. did, that is Mr. Ganley.

S. M. 970

Q. That's the manner in which meetings had previously been held or called under the plan? A. Well, meetings had been scheduled of the general council once each week, each Tuesday, but this was the following day the announcement was made by Mr. Carlysle to the chairman of the various general councils. It was made on Tuesday during our meeting——

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Q. Well, was there— A. —and the arrangements were made for this meeting in the auditorium the following day.

Q. Yes. Were you at the meeting when Mr. Carlisle made his statement? A. No.

Q. You read about it in the press? A. I read in the press, I also received word verbally on it, I had to leave that afternoon to take my family home from the hospital and I got the word by telephone that—at about ten minutes to five.

Q. From whom? A. An alternate who was attending the general council meeting.

2572 Q. Was attending the meeting with Mr. Carlisle? A. No, the general council meeting.

Q. And what word did he report to you? A. That the chairman and vice chairman of the general council had come back from the meeting with Mr. Carlisle and reported that Mr. Carlisle had stated that he was

S. M. 971

recognized in the I.B.E.W. as the collective bargaining
2573 organization for the employees.

Q. When you refer to the chairman you mean Mr. Ganley? A. Mr. Ganley and the vice chairman, Mr. Maddie.

Q. Mr. Maddie? A. That's right.

Q. Was it the next day then that you had your meeting in the auditorium? A. That's correct.

Q. Was any representative of management at the meeting? A. No.

Q. Did you take a vote at that meeting as to what you would do about the company's position regarding the I.B.E.W.? A. There was no vote taken, the con-
2574 census of opinion was overwhelmingly that the employees did not like the idea and that they wanted an independent organization. I have forgotten the exact circumstances under which the meeting recessed. A committee was appointed to contact the National Labor Board to find out if an independent organization was legal and inasmuch as there were claims made by some people that the law required affiliation with the national organization, that committee did not come down inasmuch as its chairman went off on another tangent, but several of them did contact by telephone and got the word that it was entirely legal, that meeting reconvened

S. M. 972

the next morning.

Q. And it was the day after the auditorium meeting then that Mr. Hatcher had the card which would be April 23rd? A. That's right.

Q. All right, did you see Mr. Comley circulate cards? A. Yes.

Q. Did you see what he had to say about it? A. Very much the same thing, I also entered into a discussion with him and gave him the same story that he should find out what they were advocating before they advocated it. 2576

Q. What did he have to say? A. Well, if you will look in the organization you will see which organization is preferable.

Q. He said that? A. Words to that effect.

Q. Did he make any reference to the company in any respect outside of the reference to the newspaper? A. I don't recall.

Q. When was it that you spoke to Mr. Comly about when you saw him distributing these cards? A. That was the same day on April 23rd.

Q. The same time? A. About an hour and a half 2577 or an hour afterwards.

Q. That was all during working hours? A. Yes.

S. M. 973

Q. Did you see the cards? A. Yes, sir.

Q. Were they the same as Board's exhibit # 6 which is on the table before you?

(Board's exhibit #6 passed to the witness.)

A. That's correct, it was a standard application form for the I.B.E.W. membership.

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Q. Board exhibit #6 is an exact copy as far as you know? A. As far as I know, yes.

Q. Now, did you see Mr. Kotchendorfer distribute cards? A. I didn't see him distribute them but a number of men in the division told me that he did.

Q. Who were the men? A. I don't recall their names offhand except of one man.

Q. What's his name? A. Mr. LeRoy H. Nothdurft.

Q. Did he report to the division—did he report on the distribution of cards by Mr. Kotchendorfer, did he

2579 report that it was taking place on April 23rd? A. Yes.

Judge Ransom: I object to that and move to strike out all the testimony relative to Mr. Kotchendorfer, it appears it is clearly hearsay and nothing else.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

S. M. 974

Q. (By Mr. Moscovitz) Mr. Reimers, when did he distribute cards? A. They were all distributed on the

2580 same day.

Q. Mr. Buchers, when did he, or did he? A. Yes.

Q. During working hours? A. Yes.

Q. You testified that Mr. Hatcher handed these cards out and that the men were to bring them back the following Monday? A. Yes.

Q. Do you know whether or not they did? A. The cards were collected throughout the whole bureau again on the following Monday.

Q. When you say they were collected throughout the whole bureau on the following Monday, can you tell me what you mean by that? A. Well, each man that gave out the cards gave them out with the word that

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the cards were wanted back by Monday, I believe at ten o'clock, or twelve o'clock, something in that nature.

Q. That would be what date? A. Monday, April 26th.

Q. April 26th? A. Yes.

Q. All right, and then what happened on April 26th when the men came back? A. Most of the cards that

S. M. 975

were turned in were turned in blank, I went out to have a late lunch, a very late lunch, and when I came back the men in my division were just coming out from a meeting with Mr. Thomas or Mr. Comley, where they had been talked to again on the situation.

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Q. Who is Mr. Thomas? A. My division engineer.

Q. Yes, go ahead? A. And they were told at that time that this was merely a matter of preference between the American Federation of Labor and the C.I.O., that if you signed the card, it indicated that you preferred the American Federation of Labor and if you did not sign the card, it indicated a preference for the C.I.O.

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Q. Do you know whether or not the men in your group then signed the cards? A. I think no one actually signed the cards, they took a compromise course, scratched out the word "Application for Membership", the pledge on the back of the card, practically everything else on there and printed, instead of signing their names, figuring that if anybody wanted to take that as an indication of anything, they could do so.

Q. What did you do about it? A. I stated in the beginning that whatever the majority did I would do also.

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S. M. 976

Q. Who did you state that to? A. To the group, and so when the majority took that action, I did also.

Q. Yes, and when did you get your card? A. I don't recall.

Q. After Monday or before Monday? A. I think it was Monday afternoon, after the group had decided that they were going ahead and take that action. I said in that case, I stated that I would do what the

2585 majority did and so I got a card from somebody and took the action.

Q. And who did you give the card to? A. Mr. Hatcher.

Q. Do you know what Mr. Hatcher did with these cards? A. No, I don't.

Q. Have you seen them since? A. I have seen one card since, I don't recall the ~~date but it was~~ slightly over two weeks ago, a card belonging to Mr. H. H. Mann, along with a clean blank card, which was stuck in the calendar on the desk of my division engineer, Mr. E. R. Thomas.

Q. Do you know whether or not after April 23rd,

2586 the following Monday, steps were taken by any men in your bureau to collect I.B.E.W. dues? A. No, no steps were taken to collect I.B.E.W. dues.

S. M. 977

Q. Have there been any other meetings since that date or since those dates within the plant for the purpose of securing membership in the I.B.E.W.? A. None that I can can state definitely. There were a couple of contacts I believe made between certain division engineers and certain individuals in their division who had not signed the cards, but I don't know the names or dates involved at the moment.

Q. That is something which was reported to you? A. Yes sir.

Q. You testified that Mr. Ganley was formerly chairman of the general council of the E.R.P.? A. E.R.A. it was in the New York Edison; E.R.P. in the Gas Branch. The two had never merged even though the companies had.

Q. Was he chairman of the association right up until the time it was disbanded? A. Yes.

Q. And do know where he worked? A. Well, formerly, I believe he was a cable hand. He had been 2588
chairman in the first year, 1933. The second year, I guess the 1st year was 1934, when the elections took effect, he was chairman again the following year, the second year. He was vice chairman the third year and he was chairman again the fourth year.

S. M. 978

Q. Which was 1937? A. 1937.

Q. Do you know him personally? A. Yes.

Q. Had you spoken with him at any time before April 23, 1937? A. Certainly, I was on the general council with him part of 1937 and I had sat in there 2589
as the alternate during part of 1936.

Q. So that you worked with him constantly, is that right? A. Not constantly, at various times.

Q. Now, while you were a member of the plan, could you leave your duties whenever you wanted to and engage in plan activity? A. At leaving,—as to leaving whenever I wanted to, I don't know. Nothing whatever was said to me one way or another. I was free to go and attend the general council meetings.

Q. If you had some plan work to do, you did it, and that was all there was to it; is that right? A. Yes.

Q. Now, since the plan has become disbanded and

2590 you have become a member of this independent union, can you do the same thing? A. Absolutely not. I am doing my own work now.

Q. The company is getting a better day's work? A. Absolutely.

S. M. 979

Q. And if you have your independent union activity to engage in do you do it on your own time, during your working hours, or after working hours? A. After

2591 working hours.

Q. Now, you say that you knew Mr. Ganley well, that you were on the council with him. Did he have anything to say with you about a meeting that he was to have with Mr. Carlisle, regarding the I.B.E.W.? A. You mean a personal meeting or an open meeting?

Q. An open meeting? A. Well, if I may refer to the notes again?

Q. Yes. A. On April 21st, as I mentioned before, a committee was appointed to contact the labor Board. The vice chairman of the general council, Mr. Maddie, was chairman of that committee. Instead of bringing

2592 his committee down to the Labor Board to find out about it, Mr. Maddie accompanied Mr. Ganley and Mr. Hinckley to Mr. Carlisle's office in response to a telephone call that had come to the general council office. I don't know whether the call asked for Mr. Ganley alone or whether it asked for several. Mr. Ganley stated after he came back down, was told that the group had been up there, said that Mr. Carlisle had told them that they could have a local charter from the I.B.E.W. and advised them to go see Mr. Tracy up at the Hotel Roosevelt and they did go up there immediatey, taking two other members with them

S. M. 980

which was the reason why the committee did not come down here, because the chairman had gone off to see Mr. Tracy.

Q. Who are the two other men they took with them? A. Tom Hart and Joe Lazardi.

Q. Were they then members of the general council? A. Yes.

Q. And that all took place on April 21st, is that right? A. That is correct.

Q. Now, at that time, these men were still members 2594
of the general council and Mr. Ganley was still chairman of the general council? A. That is correct.

Q. There has been no change in that status, has there? A. No, sir.

Q. At that time you had heard of no announcement in the press that the I.B.E.W. was recognized? A. Oh, yes, that came out on the 20th.

Q. I see. And after Mr. Ganley came back and reported to you that Mr. Carlisle stated that the men could have an I.B.E.W. local charter, was there a meeting held again in the auditorium? A. No, he did not come back and make such a report. The meeting was 2595
supposed to reconvene in the afternoon. We went in to the general council office and Ganley, Maddie and

S. M. 981

Hinckley were just about to breeze out and we inquired where they were going and they said they were going up to see Mr. Tracy, they had been up to see Mr. Carlisle in response to the telephone call and they were now going to see Mr. Tracy as Mr. Carlisle advised. That was possibly two or two thirty in the afternoon, I don't recall. They returned about seven o'clock at night.

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There were possibly fifteen or twenty people who had been standing around waiting to find out what they were doing. At that time they came back and said that Mr. Tracy offered the general council a local charter; that a general council had taken over the charter and would act as it is.

I don't know just what capacity, but they wouldn't have any organization until December when they were going to elect officers and they were going into the local with the standard I.B.E.W. regulations.

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At that time, when they came, I suggested to Mr. Ganley that Mr. Carlisle be invited to a meeting, to an open meeting, of the entire group to tell us why the company had taken the action that it did, and he said then that he would try and get Mr. Carlisle to attend such a meeting the next day.

Q. Was that done? A. Yes, that was done.

Trial Examiner Gates: When you come to a stopping place, I don't want to interrupt, Mr. Moscovitz, we will take a short recess.

S. M. 982

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Mr. Moscovitz: This is a good point.

Trial Examiner Gates: We will recess then for five minutes.

(Whereupon a five minute recess was taken.)

After Recess:

Q. (By Mr. Moscovitz) Now, you testified that you had all waited around until about seven o'clock the night of the 21st? A. That is correct.

Q. And Mr. Ganley came back and made his report? A. Yes.

Q. And it is about that that you had been telling us? A. Yes.

Q. At that time Mr. Ganley was still, so far as you knew, a chairman of the general council? A. That's right.

Q. Did Mr. Ganley and these other gentlemen whom you have named, they were with Mr. Carlisle during their regular working hours? A. Yes.

Q. Did you have a meeting the following day with Mr. Carlisle? A. Yes, there was a meeting, another meeting in the auditorium in the morning and in the 2600
afternoon there was a meeting held in the cafeteria at which Mr. Carlisle was invited to attend.

S. M. 983

Q. Now, before that meeting can you tell me whether or not on the 21st of April any organizers of the I.B.E.W. were provided with desk space in the company's general office building at 4 Irving Place for the purpose of securing membership? A. During the afternoon of the 21st the telephone calls came in to the office of the general council for Mr. Ed Flanagan. He was not there and the person on the other end asked to 2601
speak to me.

Q. Who is Mr. Flanagan was the member of the general council, from the service inspection and records department? A. Yes.

Q. Yes. A. I answered the phone and Mr. Dudley Ward, who was also a member of the general council representing several small departments——

Q. Where was he employed? A. He was employed in what is known as the distribution and co-ordination department.

Q. Yes. A. And he stated that he was down on the 6th or 7th floor, I have forgotten which and that

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I.B.E.W. organizers were down there with desk space and the men were being allowed or otherwise lined up, to join up with them.

Q. He also later in the afternoon, he came up to the general council office in person and was telling me about the case and said that he had talked with one of the

S. M. 984

organizers and he asked the organizer how many mem-
2603 bers they had among the employees before they started this big push on the 20th. The organizer replied rather vaguely that they had "Oh, quite a number", but after several repeated instances he admitted that 15 would probably cover it.

Q. Where is Dudley Ward working now? A. As far as I know he is still in the same place, the distribution coordination department.

Q. Is that at 4 Irving Place? A. 4 Irving Place.

Q. Did he give you the name of the organizer? A. No.

Q. At this time you only knew of Mr. Carlisle's
2604 statement regarding recognition but you did not know of any contract having been executed, did you? A. No.

Q. Did you know whether or not a contract was in existence at that time between the Consolidated Edison Company and the I.B.E.W.?

Judge Ransom: I object to that as incompetent, calling for a conclusion, not a method of proving the fact that this witness could possibly know.

Mr. Moscovitz: Well, I wonder if Judge Ransom has produced the copies of the contract which I asked if he would. There has been no

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S. M. 985

notice to produce or subpoena, but I simply, in accordance with an understanding we had, I simply asked him.

Judge Ransom: You are referring now to a contract as to recognition, or a contract as to wages, hours and working conditions?

Mr. Moscovitz: Well, I did not know that there were separate ones.

Judge Ransom: Well, there is a contract.

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Mr. Moscovitz: It is my understanding that there was a contract of recognition.

Judge Ransom: The recognition was of course an exchange of letters as has been testified here. The wage, hours and working conditions contract is in pursuance of and subsequent to the recognition. I think I have copies of those letters if you want to put them in evidence now.

Mr. Moscovitz: Well, I would like to see both of them if I may.

Judge Ransom: I produce what I state to be a copy of a letter dated April 16, 1937 from D. W. Tracy, President of the International Brotherhood of Electrical Workers to Mr. Carlisle, and a copy of Mr. Carlisle's response thereto dated, to Mr. Tracy's, dated April 20th, 1937, that being the correspondence as to recognition of the I.B.E.W. as a bargaining agency for its members. I have here somewheres if it

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is desired at this time a copy of at least one of the subsequent contracts as to wages, hours and working conditions. I produce also a copy pur-

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suant to request, a copy of the memorandum of agreement between the Consolidated Edison Company and the International Brotherhood of Electrical Workers through its local union, BA-29, applicable to all employees of the Edison Company who were members of the Brotherhood and who are engaged in operations of specified types.

Mr. Moscovitz: Judge Ransom, this letter signed by Mr. Carlisle refers to a contract along

2609 the lines of the proposed agreement enclosed, is that this agreement which you just handed me?

Judge Ransom: No, Mr. Tracy originally submitted with his letter of April 16, 1937, a suggested form of agreement with respect to wages, hours and other matters. The matter was a subject of subsequent and further negotiations between the Local BA-29 and Mr. Tracy on one side and Mr. Carlisle, and the others in behalf of management, which resulted in the agreement which was to and did go into effect on June 15th. The agreement was executed as a result

2610 of the bargaining between the local and Mr. Tracy and the management and is not in the exact form in which it was submitted by Mr. Tracy with his letter of April——

Mr. Moscovitz: April 20th?

S. M. 987

Judge Ransom: Of April 16th.

Mr. Moscovitz: Yes, the 16th. Thank you very much for the production, Judge Ransom.

I would like to offer, Mr. Examiner, at this time a copy of the letter from Mr. Tracy to Mr. Carlisle, dated April 16, 1937, and the copy of

the reply to Mr. Tracy from Mr. Carlisle dated April 20, 1937.

Judge Ransom: No objection.

Trial Examiner Gates: Admitted.

Mr. Moscovitz: We will admit it as one exhibit. They are attached. If that is agreeable?

Trial Examiner Gates: Mark them Board's exhibit #13a and 13b.

(Documents referred to were marked Board's exhibits #13a and #13b, Witness Joy, for identification.) 2612

Mr. Moscovitz: I would like to have marked for identification again at this time the memorandum of agreement between the Consolidated Edison Company of New York and the I.B.E.W. which is dated June 15, 1937.

(Document referred to was marked Board's exhibit #14 for identification, Witness Joy.)

Judge Ransom: I may state, if you desire it, that the agreements with other local unions, between other companies and other local unions, 2613 are generally in the same form and to similar effects, with some minor variations due to particu-

lar situations as to the labor forces and operating conditions of those companies in their localities. If it becomes pertinent and you desire it, I will produce copies of any or all of the others.

Mr. Moscovitz: Can you answer me this, Judge? Do the other agreements which have been executed and each of the other companies named in this proceeding have a similar provision

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as is found in Board's exhibit #14 for identification? I refer to article I, under which is "Scope", subsection 1.

Judge Ransom: In all of the agreements of article I "Scope", paragraph 1 thereof, it is provided that this agreement shall apply to all employees of the particular company who are members of the Brotherhood and are engaged in operations essential to the furnishing of—then that paragraph varies necessarily according to the
2615 type of services and the employees engaged therein. For example, this particular agreement, Board's exhibit #14 for identification, involving Local Union B-829, relates to the furnishing of electrical service, and consequently the phraseology and specifications of the latter part of the paragraph are such as are pertinent to that company's electric operations in its particular locality.

There is, however, a uniform agreement that this agreement applies to all employees who are members of the Brotherhood.

2616 S. M. 989

Mr. Moscovitz: Yes, and are the other agreements signed by the same persons as signed this agreement?

Judge Ransom: The resepective agreements are signed by the company for the officers of that company and for the employees who are members of the Brotherhood are signed by the International President of the International Brotherhood of Electrical Workers and by whatever committee from the particular local union was authorized by its members to negotiate the agreement.

Mr. Moscovitz: Yes, and if I may ask you one or two other questions, Judge? It might do away with the necessity of bringing in any of the other contracts.

Are all of the other companies named in this proceeding now covered by contracts?

Judge Ransom: I am informed that contracts have been signed by each of the respondent companies and the appropriate local union, and such contracts are now in force.

Mr. Moscovitz: Yes, and are all of them executed as of the 15th of June? 2618

Judge Ransom: I think not, sir. I think that they have been executed on or as of—I think they were executed on different dates, during June, but whether they were all executed to become effective as of June 15th, I am not able to state.

S. M. 990 :

Mr. Moscovitz: And were they all preceded by a letter similar to Board's Exhibit #13 from Mr. Tracy to Mr. Carlisle?

Judge Ransom: Why, my impression is, and 2619 I believe it is correct, that there was only one letter from Mr. Tracy to Mr. Carlisle on April 16th and only one response. There were not separate letters with respect to each of the respondent companies.

Trial Examiner Gates: While we are still on that same point, will you state the names of the locals, if there is more than one, which are involved?

Judge Ransom: I do not know as I have here the numbers of the locals. I may state the situation and I can supply the numbers later.

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In the Consolidated Edison Company there are two local unions of the I.B.E.W. with which separate contracts were made. One is B-829, which has just been identified. That relates to electric employees. There is another with a local whose number I am not able to state from recollection which relates to the gas employees of the I.B.E.W. of the company, who are members of the I.B.E.W.

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Then there are contracts with the appropriate local made by the Brooklyn Edison Company, New York and Queens Electric Light and Power Company, and in Westchester County, the Westchester and Yonkers Companies have one contract, a joint contract, with one local union of employees of the Westchester and Yonkers companies.

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Then there is a contract with a local union of employees of the New York Steam Corporation, and a contract with a local union of employees of the Consolidated Telegraph and Electrical Subway Company.

And I may say that so far as substantive provisions, the contracts are identical in wording and effect, the variances being due to particular working or operating conditions affecting some of the respondent companies. For example, the Consolidated Telegraph and Electrical Subway Company has provisions in some of the articles, which are at variance from those of the Electric Companies.

Trial Examiner Gates: Is there any distinction made as to employees on the production and distribution of gas in any of the companies other than the Consolidated Edison?

Judge Ransom: Well, sir, in the City of New York there is only one company in this system and that is the Consolidated Edison, this one gas company. The only other company in the system which distributes gas is a company which does not manufacture gas, that is the Westchester Lighting Company, and if my impression is accurate, I believe that the contract of the Westchester Lighting Company with the local union of the employees of the Westchester Lighting Company and the Yonkers Electric Light and Power Company 2624 includes the employees who, in that county, are engaged in distribution operations which are—as

S. M. 992

you may say, jointly gas and electric. They have the system, for example, in Westchester County, under which things like meter reading and billing and the like is done as a joint operation. The only manufacturing company, in the ordinary course, so far as gas is concerned, in the system, is the Consolidated Edison Company.

Trial Examiner Gates: Proceed. 2625

Mr. Moscovitz: May I proceed?

Trial Examiner Gates: Yes.

Q. (By Mr. Moscovitz) The following day which would be April 22nd, you testified that there were two meetings in the auditorium? A. One in the auditorium and one in the cafeteria.

Q. And when was that, was that at 4 Irving Place? A. Yes.

Q. Well, did you attend both meetings? A. I did.

Q. Did you attend the morning meeting? A. Yes, sir.

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Q. What took place there? A. Nothing unusual.

Q. Did Mr. Carlisle attend that meeting? A. No, he did not attend that meeting, there was nothing of any importance that transpired there except the member or members of the committee that had been ap-

S. M. 993

pointed to contact the National Labor Relations Board to find out if an independent organization was legal, reported that they had contacted by telephone and were
2627 told that it was, provided it was actually an independent organization and not company supported.

Q. Did they report to whom they had spoken in the labor Board? A. I don't recall whether they did or not.

Q. Did you attend the afternoon meeting? A. I did.

Q. What took place there? A. There was some preliminary discussion, I don't recall.

Q. Who attended? A. Anything that was said.

Q. Who attended? A. Members of the general council and various other departmental and bureau councils
2628 of the employee representative association.

Q. Any representatives of management there? A. Only Mr. Carlisle and Mr. Grove.

Q. Who is Mr. Grove? A. Vice President of the Consolidated Edison Company.

Q. All right, tell us what took place after Mr. Carlisle got there? A. Well, there were a number of questions which had been written out and given to Mr.

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Ganley, the chairman of the E.R.A. and he asked those questions of Mr. Carlisle for answers and then there were some questions from the floor. One of the first

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questions was, "Would he explain exactly why the company had taken the steps it had, in recognizing the I.B.E. without consulting the employees to find out what their preference was in the matter".

His reply was to the effect that the Supreme Court had upheld the Wagner Act and if the company that was engaged in Interstate Commerce, that it would then be violating the law and actually in meeting with that organization but regardless of that there was a state bill before the state legislature covering the same ground which was very certain to be passed and that, 2630
abiding by the spirit of both laws that the company would have to cease to deal with a company supported organization, that he had received the letter from Mr. Tracy, asking that the I.B.E.W. be recognized as the collective bargaining organization and he was granting that recognition..

The question as to why the employees were not consulted was not answered.

Q. Did he make any statement as to whether or not he desired the employees to become members of the I.B.E.W.? A. Yes, indirectly, one question was put to him as to whether or not the policy of the foremen and other supervisors, instructing or advising 2631

their men to join the I.B.E.W. had company sanction, had management sanction. His reply to that was that they did not. There was no management sanction given for that, he was then asked would he please issue a statement or order to those men to stop doing that and his reply to that was that he would not.

In reply to another question, I have forgotten just what it was, he stated substantially that, "Make no mistake about it, I have agreed to bargain with the

I.B.E.W., I intend to do so and I hope the employees will make this effort successful."

Q. Did the general council meet at any time after that on the same day? A. Yes, it met twice after that on the same day.

Q. Did you meet in the evening? A. Yes, we met in the afternoon and again in the evening.

Q. With whom did you meet in the afternoon? Just the general council? A. Just the general council.

Q. For the purpose of discussing what had taken
2633 place at the meeting? A. That's correct.

Q. And did you come to any decisions? A. When the meeting at the auditorium broke up, Mr. Ganley stated that members of the general council should meet

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in the general council office to start forming an independent organization. We went down there and when the meeting convened, I told him that they might as well forget it because I had that day attained a glimpse of a copy of the Doyle Bill and that under the bill if it became a law, the organization that sprang up as
2634 an outgrowth of the E.R.A. would have no status whatsoever, it would be legally defined still as a company union and they might as well drop the whole idea, that was the sum and substance of that meeting.

Q. What happened in the evening meeting? A. Well, I was somewhat late in getting to the evening meeting, I don't know just what transpired in the evening.

Q. Where did you meet? A. In the Board room on the 14th floor.

Q. That's the Board of Director's room? A. I presume so, it is just known as the Board room.

Q. Yes. A. At that time, when I arrived at the

meeting Mr. Ganley was talking about the general council, contacting Mr. Tracy, to take up the matter of getting a charter.

He called Mr. Tracy on the phone and asked for an appointment that night. Mr. Tracy said he could not come down and he stated that, or they asked if they could go up to see him at his hotel and he said again that they could not, that he was busy, but he would

S. M. 997

see them on the following day. 2636

Q. Now, all these meetings that you were having these days were held during working hours, were they? A. Except the evening meeting——

Q. Except the evening meeting you just testified about? A. That's right.

Q. Well, they were all held in the auditorium in the Board room and on other company property? A. And in the general council office on the 12th floor.

Q. Yes. And did these meetings have the approval of your foreman and other supervisory employees? A. As far as I know.

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Q. In other words, you still went without any question? A. That is correct.

Q. By foremen or supervisory employees about your going, is that right? A. So far as I know personally.

Q. None of you had any deductions from your pay for the time you spent doing this? A. No.

Q. All right, and around April 23rd, which was the day after the telephone call of Mr. Tracy, did the general council meet again in the board room? A. The general council met again that morning about nine

o'clock, they were supposed to meet Mr. Tracy at ten.

Q. Now, who was the leader among you men at that time, still Mr. Ganley? A. Mr. Ganley was still the chairman.

Q. Yes. A. There was some general discussion of the situation, all of the members were not there.

Q. Did you have a majority of your membership present? A. Yes.

Q. Go ahead. A. At that time most of the men took
2639 the attitude that if the general council did not accept the offer of the charter made, some other groups of employees would and they thought it best that they

accept the offer so that the charter would be in good hands.

Q. Who said? A. I don't recall who made that specific statement, but that was the general idea at that meeting, and I introduced a resolution calling for the issuance of a statement to the employees to tell them what was happening because I knew that
2640 they did not know what was happening, ending up, the statement would have ended up with the conclusion that the general council had received offers of charters from both the I.B.E.W. and the United Electrical & Radio Workers, and that they could not see their way clear to accept either offer and consequently had voted to disband and that any action taken by individuals would be as individuals. They, the majority, did not approve of that because of the fact that they said if they voted to disband, the offer might not be any good and we wanted the charter for ourselves.

But the statement was not issued and the motion

to disband was not carried. There was actually no motion under the resolution introducing this statement.

Q. Well, did you men then go to see Mr. Tracy? A. I did not. I had spoken the pervious night and told them that I was not going, that I wanted no part of it. I had raised questions during that meeting the preceding evening as to how many people there who

S. M. 1000

were talking about accepting the offer had read even a portion of the constitution of the organization that 2642
they were planning to accept the charter from, and that here were only two members besides myself who had read a portion of it.

I brought out some of the features in there that were extremely objectionable, and Mr. Ganley suggested that I take those up with Mr. Tracy the next day, when we met with him, that maybe they could be waived, and to that, my reply was that a constitutional provision could not be waived even if Mr. Tracy wanted to, and that he wouldn't if he could, and that I wasn't going to meet with Mr. Tracy anyway because I wanted no part of it. 2643

Q. And this is still the 23rd of April that you are talking about, the meeting of you— A. What I was speaking of then was the evening meeting after the meeting with Mr. Carlisle.

Q. Now, then, on the 23rd——

Judge Ransom: What was that date?

The Witness: That was the 22nd.

Q. (By Mr. Moscovitz) But you had, immediately before that, been telling us about the meeting of April 23rd? A. That's right.

Q. That was during the day? A. That was during the morning, between nine and ten o'clock.

2644 *Arthur Currie Joy—For N.L.R.B.—Direct*

S. M. 1001

Q. And that was during your regular working hours? A. Yes.

Q. And you had a majority of your council members there? A. That is correct.

Q. And after your discussion, in which you lodged a certain protest, as I understand it, your meeting broke up; is that right? A. The meeting adjourned for the majority to go see Mr. Tracy about getting the contract.

2645 Q. And you refused to go? A. That's right. They said that they were going to meet again in the afternoon, that they were not going to accept a charter, but they were going to discuss it, and they would meet again in the afternoon and would let those members who were not at that meeting with Mr. Tracy know by telephone when to meet.

They then went to the Hotel Roosevelt to meet Mr. Tracy.

Q. Did they report to you gentlemen? A. I received no word of any meeting that afternoon. I later received word verbally that the group had come
2646 back to the place, had gotten together, and had signed a petition for the charter without calling any further meeting.

Q. From whom did you receive that word? A. Mr. W. I. Johnson.

Q. All right. Now, on that same day—by the way, these men who made up the majority of the council,

S. M. 1002

were they all from the same building that you worked in? A. No, they were scattered throughout the company, throughout the electrical branch of the company.

Q. They also were doing this on their regular working hours of time; is that right? A. Yes.

Q. Now, on the same day, April 23rd, do you know whether or not there were meetings outside of the meeting that you attended, of employees, where the employees were requested to become members of the I.B.E.W.? A. The 23rd? I don't recall any, except the massing together of the men in my own bureau at lunch time and again at five o'clock.

Q. By whom? A. Well, we were meeting over in the corner twice a day to keep posted on the latest 2648
developments.

Q. Do you know whether or not the division leaders and other group heads in the outside plant bureau of the electric engineering department called groups to them and gave them advice as to what they should do regarding the I.B.E.W.? A. Yes.

Judge Ransom: Objected to, as wholly incompetent and as hearsay. The witness obviously doesn't know. It is second, third or fourth degree hearsay.

S. M. 1003 2649

Mr. Moscovitz: We do not know yet.

Trial Examiner Gates: He may answer if he knows.

A. The 23rd is the day I spoke of, when the division heads did hand out the cards and did give sales talks to their employees.

Q. Yes. And that is the period and the meetings about which you have already testified? A. Yes.

Q. All right. Now, those are the meetings to which you referred where cards were handed out which were brought back on the 26th? A. That's right.

2650 Q. And can you tell me whether or not at that time Mr. Ganley was still chairman of the employee representation plan?

Judge Ransom: Objected to as calling for a conclusion. The witness has testified that the plan had died some days before.

Mr. Moscovitz: I understood it was in the throes of death.

Judge Ransom: Well, I expect it was pretty well dead when the management said on the 2651 20th that they couldn't further deal and negotiate with it about anything.

Mr. Moscovitz: Well, I wonder——

Q. (By Mr. Moscovitz) Was it buried? A. I expect it was by that time. I had no more information

S. M. 1004

about it after that meeting in the morning.

Q. Do you know whether or not the officers of the general council, after the meeting with Mr. Tracy on the 23rd day of April, rather, the 22nd day of April, 2652 became officers of any other labor organization?

Judge Ransom: Objected to as incompetent, highly improper in form. I have no objection to inquiries as to whether the persons who formerly were officers in the general council or the dead and buried general council, whether they later did anything. They had a right to.

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.

A. The offer was made in person to the five men who went to see Mr. Tarcy originally, that a charter would be given to the members of the general council, that

would be taken over intact and its officers would become officers of the local. That offer was confirmed by letter, copies of which were distributed around the company, and it was apparently also confirmed at the meeting at which practically the entire general council went to see Mr. Tracy.

Judge Ransom: I move now to strike out the answer, on the ground that the letter is the only acceptable evidence of such a matter.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception. 2654

S. M. 1005

Q. (By Mr. Moscovitz) Then what happened?

Trial Examiner Gates: I call attention to the fact that the question was not answered completely.

Q. (By Mr. Moscovitz) The question, Mr. Witness, is whether or not the officers of the employee representation plan, these five men who went over to see Mr. Tracy, became officers of any other labor organization, after they returned? A. The officers of the 2655 general council became officers of the local union, B-829, I believe it is, of the I.B.E.W. The chairman of the general council became president or general chairman, whatever the term is, in the I.B.E.W. local——

Q. That is Mr. Ganley? A. Yes. The vice-chairman, Mr. Maddie, assumed the vice-chairmanship or vice-presidency of the I.B.E.W. local. The secretary of the general council, Mr. Hinckley, became the financial secretary of the I.B.E.W. local, and two members, two other members of the general council became officers of the local.

2656 *Arthur Currie Joy—For N.L.R.B.—Direct*

Q. And they still hold such office? A. So far as I know. I don't know anything about their internal workings at present.

Q. Do you know whether or not Mr. Ganley is still employed by the company? A. I do not.

S. M. 1006.

Q. You have not seen him since the death of the plan? A. No.

Q. And can you tell me whether or not, after the
2657 April 26th episode, where the men returned their application cards, you saw, at any time, the collection of dues for the I.B.E.W. on company property? A. No, I have not seen any collection of dues whatsoever.

Q. Did you have discussions with a collector of dues who had been collecting on company property? A. Yes.

Q. Who was that? A. I cannot recall his name at the moment. If you will give me just a moment, I think I will find it.

Q. All right. A. That was Walter Hartnett.

Q. Who is he? A. He is an employee in the service
2658 inspection and records department, who was a member of the departmental council of that department under the E.R.A. He stated in my presence that he had collected over $220. in dues for the I.B.E.W.

Q. When was that that he told you that, when was that that he told you? A. Well, I don't know the exact date, approximately on the 4th, about the 4th of May.

S. M. 1007

Q. May 4th? A. Yes, 1937.

Q. Did he say that he had collected dues or initiation fees? A. I don't recall the exact statement, the

two are usually considered synonymous, in all the discussions around the company.

Q. Did he tell you where he had been collecting these dues or initiation fees? A. Among the employees in his own department.

Q. Did he tell you whether he had been doing it during or after working hours? A. No, I don't believe he did.

Q. Was he on the company's payroll at that time? A. Yes, so far as I know.

Q. Where was the office of the general council? 2660
A. That was on the twelfth floor of the company building at 4 Irving Place.

Q. Is that office still there in use by employees? A. That I don't know, for what purpose it is being used now, I have not been down there.

Q. Do you know whether or not it was used at any time after the 20th, that is, in 1937, for I.B.E.W. activities?

Judge Ransom: I object to that as calling for a conclusion, incompetent in form.

S. M. 1008 2661

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.

The Witness: I was informed, I don't recall the date——

Q. (By Mr. Moscovitz) By whom were you informed? A. By—just a moment—I was informed by at least two people, one was W. I. Johnson, and the other——.

Q. Who was W. I. Johnson? A. He was a member of the general council from the system engineering department.

Q. Yes. A. And the other, his name I can't recall at the exact moment, he was a representative from the commercial buildings department, and is now the treasurer of the I.B.E.W. Local B-829.

Q. What were you informed? A. That the general council office was still being used by the members of the ex-general council, that they had not moved out yet to their new I.B.E.W. headquarters, they were handling activities from there.

2663 Judge Ransom: I move to strike out the answer to both questions, on the ground as purely hearsay and incompetent.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) You also what? A. I also was informed by employees that he had taken a newspaper reporter in there.

S. M. 1009

Q. Who informed you that? A. Mr. William O'Brien.

2664 Q. Who is he? A. He is an employee of the commercial relations department, I believe.

Q. Commercial relations? A. Yes.

Q. Yes, go ahead. A. That he had taken a newspaper reporter in to the room formerly used by the general council, that they were using it at that time, that they had been in there from time to time—they had been in there in time to hear Mr. Ganley, who was then the chairman, or the president, whichever it is, the I.B.E.W. local say, "To hell with the signatures, it is money Tracy wants."

Q. Well, was that after April 20th, 1936? A. Yes, it was, I don't recall, I don't recall exactly the date of those instances.

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Q. Approximately? A. They were after April 20th, there is no question about that.

Q. Were they after April 23rd? A. Yes.

Q. All right, now, do you know whether any employee of the company at any time after April 23, 1937, was engaged only in organizational work for the

S. M. 1010

I.B.E.W. while still on the payroll of the company? A. Yes.

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Q. Who? A. W. I. Johnson.

Q. That's the gentleman about whom you have just told us? A. I mentioned it before.

Q. Yes. A. He stated that the only work that he was doing at that time was contacting the employees in his bureau to line them up for the I.B.E.W. and I also learned that the business manager of the local I.B.E.W., Mr. Patrick McGrath, was also on the company payroll during the time that he was actively organizing.

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Judge Ransom: I move to strike it out, completely as wholly hearsay and not in any way probative upon any issue here.

Trial Examiner Gates: It may stand, if the witness states the basis of his knowledge.

Judge Ransom: Exception.

The Witness: The basis of the knowledge is a statement from Mr. McGrath himself, he had planned to come down to see me to try to sell me into the idea of joining the I.B.E.W., and the next day, the day he was supposed to come down to see me, he called me up and said that he could not come down, he was back to work.

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S. M. 1011

I said, "what do you mean back to work, back at 41st Street?" He said, "Yes, the Doyle Bill was signed yesterday."

I said, "Aren't you off the company payroll on leave of absence?" He said, "No."

Mr. Moscovitz: That's all.

Trial Examiner Gates: We will recess until 1:45 o'clock.

2669 (Whereupon, at 12:45 p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

AFTERNOON SESSION.

Trial Examiner Gates: Proceed.

ARTHUR CURRIE JOY, resumed the stand.

Cross Examination:

Q. (By Mr. Ransom) Mr. Joy, bring back to your mind, if you will, that afternoon meeting on April
2670 22nd, at which various employees who had been officers and members of the councils were in attendance: you said that meeting was called by Mr. Ganley, as far as you know? A. As far as I know, it was.

Q. In the course of that meeting, was some committee sent to bring Mr. Carlisle before the meeting?

S. M. 1012

A. I was, I was a member of that committee.

Q. And you did that? A. The chairman, Mr. Ganley, called four names and said, "I'll ask these four people to go down to Mr. Carlisle's office and bring him up."

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Q. Mr. Ganley had some questions which had been developed by various employees which they wished to put to Mr. Carlisle? A. That's right.

Q. Do you remember Mr. Carlisle being asked this question: "Is it to be a closed shop?" A. I do.

Q. Do you remember whether Mr. Carlisle's answer was as follows: "I wish to say that all of the discussions which we have had with the International Brotherhood of Electrical Workers does not include the closed shop"? A. It was substantially that, I don't recall that they were the exact words.

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Q. But certainly to that effect? A. It was to that effect, up to that time there had been no discussion of a closed shop, he did not say that there would not be, though.

Q. At the meeting on the preceding day, the question of a closed shop or the question had not come up in any way, or were you present at the meeting of the council chairman with Mr. Carlisle? A. No, I

S. M. 1013

was not.

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Q. You were not there? A. No.

Q. But as far as you were concerned, that was the first time that you had heard that question being raised in the discussions? A. Well, the matter had been discussed.

Q. I mean, as far as the discussion with management? A. That's correct.

Q. Mr. Carlisle's answer was either what I have read or to a similar effect? A. Right.

Q. Now, you said this morning that the question was asked about the practice of foremen advising employees to join the I.B.E.W., and Mr. Carlisle's reply to that question. I ask you whether you recall whether

2674 Mr. Carlisle said, in the first place, "It is perfectly obvious that when I answered Mr. Tracy's letter, stating that we would engage in collective bargaining, it meant just what it did, and as far as I am concerned, I hope that it goes through and that the employees do everything they can to make it a success." Do you remember that statement? A. Substantially that, not altogether.

Q. But there is no conflict as to the substance of what was said? A. No.

2675 S. M. 1014

Q. Now, let me ask you, in connection with that question of any activities of foremen and employees in inducing employees to sign up in the I.B.E.W.,—whether Mr. Carlisle made this statement: "Let me make it very plain, no member working for this company has got to do anything except what they want to do individually, on their own. I will be very clear about that. It is your selection. You are to do as you please. We are not taking the position that you must do this or you cannot do this. You have to
2676 make the choice." A. He may have said something like that, he made some such statement as that, yes.

Q. Either the statement which I have read or a substantially equivalent statement to similar effect? A. Correct.

Q. Do you remember the question being brought up and put to Mr. Carlisle as to the truth of rumors that vacations and sick pay and the other numerous welfare measures of the company were to be discontinued under I.B.E.W. bargaining. Do you remember that? A. The question was raised, yes.

Q. Do you remember Mr. Carlisle's reply to that? I ask you whether he replied to this effect: "I have

S. M. 1015

said on every occasion that this question has been raised, but it is the desire of the company to preserve everything that is being done for the men as is"? A. That sounds approximately as I remember it.

Q. Do you remember the question being raised then as to if and when the agreement that would show the details of any agreement on wages, hours and any other working conditions between the company and the I.B.E.W. and its local union as to if and when that would be published, do you remember that question being asked? A. I can't say that I do.

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Q. Do you have any recollection of that? A. No.

Q. Were there various questions asked as to whether the company in view of the prospective taking effect of the Doyle-Neustein Bill, would or could continue any manner of financial support for an independent organization of employees if one was formed? A. I do not remember any such question as that, no, sir, the question was, as I remember, it was stated that we understood that they could not support any independent organization at all and the question that was put to him was whether or not he would allow a secret ballot to let the employees decide for themselves whether or not they wanted an independent organization or just what they did want.

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S. M. 1016

Q. Well, the question was asked, was it not, whether, as you say, there could be a secret ballot of employees to see whether they wished some international organization or some purely independent organization of their own? A. That question was put to him several times.

Q. Do you recall that he replied with a question on

his own part as to whether employees would expect the management to pay the expenses of conducting such an election? A. That's correct, he did ask that.

Q. Do you recall whether Mr. Carlisle stated to the employees in substance as follows: "You go out and do what you want, but so far as the management is concerned, it cannot and will not pay any money for that purpose"? A. Substantially that, yes, sir.

Q. Either in those words or to that effect? A. That's right.

2681 Q. And did he explain also that if it were finally determined that the company and the employees in their relations with management were subject to the jurisdiction of the Wagner Act and the National Labor Relations Board, that any such practice on the part of the company would be contrary to the spirit, if not the letter, of the Wagner Act? A. He, as I remember, stated that if they were under the jurisdiction of the Wagner Act and the National Labor Relations Board, that meet-

S. M. 1017

ing with us at that time——

2682 Q. Yes. A. Would be a law violation and that he was violating the spirit of the law in so meeting.

Q. Well, didn't he say that to continue those payments, it would be, if it were held that the company came under the Wagner Act, which had just been upheld by the Supreme Court, that if it were held that the company did come under the Wagner Act it would be contrary to the spirit and letter of that Act for the company to continue to make such payments for the expenses of a collective bargaining organization? A. Well, for the expenses of a collective bargaining organization, yes, I do remember that he went into that in connection with the secret ballot.

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Q. You don't recall when the question was put to him as to having a secret ballot of the employees to determine what the employees wanted, that the first question which he asked was whether the employees had any idea of the management paying the expenses? A. Yes, that's correct.

Q. And then he went on and explained why that could not be done? A. I don't recall that he explained it, the only thing that I recall is that he refused it.

Q. Do you recall if he made the statement or a state-

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S. M. 1018

ment similar in effect, "When on Tuesday we met with the chairman of the councils, we told them exactly that so far as continuing the present plan was concerned, we were through, we had to be through under the law, we ended it then, so far as the plan is concerned, in the shell of technicality, yes, it may be still in existence, but the management cannot go on in the spirit of the law dealing with it." A. He made substantially that statement, yes, under the spirit of the law that they could not continue dealing with the organization.

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Q. Did he say with respect to the plan, of which you and the others had been officers or council members, in substance, that the representatives of the management had thought that their collective bargaining plan in force up to that time had been legal and proper, but with the decision of the Supreme Court which might or might not bring them within the operation of the Wagner Act and the approaching creation of a State Board, with jurisdiction, that they simply could not go on with it, any manner of financial support or bearing expenses of collective bargaining? A. I don't recall the first part of it, but that is what he repeated quite a few times

2686 that day, under the spirit of the law, and also the Federal Law, that they could not continue.

Q. Do you recall him saying that, "We certainly thought that this set-up was legal, but now we find that it may not be"? A. I don't recall that.

S. M. 1019

Q. You don't recall him saying anything to that effect? A. No, I don't recall his discussion of the legality of the old employee representative association at all,
2687 merely the legality of the continuance of it, which he said then could not be continued.

Q. Your work, I think you said, is entirely in the preparing of specifications? A. Well, not entirely, it is in the preparation of specifications and the studies of high voltage and low voltage cables, and preparation of tests, if necessary, to gain information about their characteristics, in other words, I am in one of the groups—in a group whose general responsibility is for the proper design and operation, installation, maintenance, etc., of cable systems, underground cable systems in the company.

2688 Q. And that cable system is a local distribution system in what boroughs? A. Manhattan, Bronx, Brooklyn and Queens.

Q. You mean, parts of each of those boroughs have underground lines? A. Well, we also handle overhead as far as the wires are concerned, but that is a comparatively small proportion of the work.

S. M. 1020

Q. You spoke of Mr. Hunter and Mr. Comly as sub-group leaders, or sub-group heads in your department? A. That is correct.

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Q. Did they have any authority, as you understand it, either to hire employees or to discharge them? A. No, I understand no one has that right except the personnel department or the president.

Q. Then you understand that none of these men whom you have testified about this morning in your bureau, has that authority? A. That is correct, none of them have the power to hire or fire.

Q. Do you know whether Mr. Hunter or Mr. Comly are members of the I.B.E.W.? A. So far as I know, they are not.

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Q. And you undertake to state that you know, or just that you don't know? A. I don't know that they are members.

Q. Do you know whether Mr. Butcher and Mr. Reimers and Mr. Kotchendorfer are members? A. So far as I know, they are not.

Q. Do you know one way or the other, Mr. Joy? Your answer is no? A. I do not know whether they are or are not.

Q. Mr. Thomas? A. Again I don't know. If I may

S. M. 1021

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add to that, Mr. Butcher stated to his men that he would, in effect, just love to join if he was only eligible.

Q. And from that you infer that under the constitution with the I.B.E.W., he is not eligible, and so is not a member? A. That's right.

Q. Do you know whether Mr. Hatcher and Mr. Comly were voting and participating members under what in your company was called the E.R.A.? A. They were not.

Q. They were not. A. Mr. Comly has just recently been transferred to us from Brooklyn, and I know nothing about his status there, and Mr. Hatcher——

Q. Then your answer applies to Mr. Hatcher? You don't know about Mr. Comly? A. That is correct.

2692 Q. Now, you gave some testimony of what you said somebody told you about persons whom you characterized as the organizers of the I.B.E.W. being in the building at 4 Irving Place, and engaged in the solicitation of membership applications, and I think you said they had desk space in some place? A. I was told by Mr. Dudley Ward.

S. M. 1022

2693 Q. Are you able to state who those men were whom you referred to as organizers? A. No, I do not know whether he knew them or not. He did not give me any names at all.

Q. And you are not able to state whether they were or were not at that time employees of any of the companies of the system? A. I am not able to state that, no.

Q. You say you formed this independent gas and electric union on or about April 29th of this year? A. That is correct.

Q. How many members, with paid-up dues, has that union? A. I don't know that that is relevant to this
2694 question, Judge Ransom.

Q. I think that may have to be determined by some one other than yourself.

Mr. Moscovitz: I think, Mr. Examiner, that the objection taken by the witness is well taken.

Trial Examiner Gates: What reasons do you have for not wanting to disclose that?

The Witness: As I understand it, this is a case against the company for having violated the Wagner Act, in having followed unfair labor practices. I do not see that the membership of the Independent Gas & Electric Union has anything to do with this case.

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S. M. 1023

Judge Ransom: I submit that there is a question. There has been a claim here, unfoundedly made, that men have been laid off and discharged because they were members of labor organizations. The charge, of course, is not true, but it becomes certainly pertinent in that kind of proceeding. Now, let us see how many members of labor organizations there are in the company. Of course, there has been some reduction of force from time to time, and that undoubtedly included men who were formerly members of this or that labor organization.

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Men cannot be continued in the employ of the company because they are or because they are not members of labor organizations, but it is certainly pertinent on the issue tendered by the complaint here as to the number of employees there are, who were members of any labor organizations.

Mr. Moscovitz: Mr. Examiner, if I considered it pertinent from the government's point of view, I would ask this witness whether or not there have been membership in any particular amount, and I certainly do not think the fact that there are five or six persons who are named in the complaint as having been discharged as members of different labor organizations has anything to do with the question the Judge just asked Mr. Joy. I don't see any relevancy whatsoever, and I think that the objection as made by the witness was very well taken.

2697

S. M. 1024

Trial Examiner Gates: Will it serve the pur-

2698 poses of the record so far as you are concerned, if it is conceded on the part of all, that there was a substantial number?

Judge Ransom: No, I do not think that would meet or fulfill the proof that we are entitled to make. After all, we did not——

Trial Examiner Gates: I sustain the objection.

Judge Ransom: Exception.

2699 Q. (By Mr. Ransom) You have not attended any meetings of Local B-829? A. I have not.

Q. You don't know whether, from your knowledge, whether or not or when an election of officers took place on the part of the members of that local? A. I don't know when, I do know that one took place, I was informed by a member of the local that such had taken place.

Mr. Moscovitz: Will you fix that date, do you know?

The Witness: No, I don't know the date.

2700 Q. (By Mr. Ransom) Well, it was some time shortly after these preliminary organizational steps of which you did have personal knowledge? A. That's correct.

Q. Well, do you say that probably some time early in May, soon after the first of May? A. Yes, that would be a close shot at it.

S. M. 1025

Judge Ransom: That's all.

Mr. Moscovitz: I have one or two questions, Mr. Examiner.

2701

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) At the time you were in attendance at the meeting at which Mr. Carlisle spoke, did Mr. Carlisle point out to you that the Wagner Labor Act had been passed in July of 1935? A. I don't recall whether he mentioned the date of its passage or not; he mentioned the upholding of the validity of it by the Supreme Court.

Q. And did he in a discussion of the company's subscription to the policy of the Federal Labor Act, tell you why financial contribution had not been withdrawn until April, 1937?

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Judge Ransom: I object to the question as it assumes an attitude of subscription to the policy of the Act, as to which there is no evidence, I think this witness testified, and certainly others have, that Mr. Carlisle's statement was that they did not believe that the Federal Act applied to these companies.

Trial Examiner Gates: He may answer the question.

Judge Ransom: Exception.

2703

The Witness: What was the question?

(Reporter repeated the last question.)

The Witness: I don't recall any such statement at all.

S. M. 1026

Q. (By Mr. Moscovitz) Mr. Carlisle told you the financial support was being withdrawn because for other reasons—withdraw that, please. Carlisle told you that financial support was being withdrawn because for the company to continue financial support would violate the

2704 spirit of the Federal Labor Act, isn't that so? A. That is correct.

Q. All right. A. He reiterated that several times and stated that he would not put himself or the corporation for one minute in the position of violating the spirit of the law, even though they could not violate the letter of it.

Q. And did he explain to you why he waited until 1937 to comply with the spirit of the law when it had been passed in July of 1935? A. I don't recall that he
2705 did.

Q. All right. Now, you referred in your testimony this morning to a letter sent to Mr. Ganley in April, 1937, signed by Mr. Tracy? A. Yes, sir.

Q. As I recall your testimony, you stated that copies of the letter were given to the employees of the company? A. A number of copies were given to councilmen, and I believe a further number were posted on bulletin boards.

Q. And were they posted on bulletin boards of the company? A. Yes.

2706 S. M. 1027

Q. And is this a copy of that letter?

(Copy of the document was passed to witness.)

A. That seems to be a copy, yes, sir, as well as I can recall it.

Mr. Moscovitz: Mr. Examiner, I have a long distance telephone call which came in for me, I wonder if you would give me just a minute to rush down and take it.

Trial Examiner Gates: All right, we will have a short recess.

(Whereupon a short recess was taken.)

2707

AFTER RECESS.

Mr. Moscovitz: I offer this, Mr. Examiner.

Judge Ransom: I object to this purported letter of April 21, 1937, from Mr. Tracy to Mr. Ganley as in no way binding or probative, as against any of the respondents. Obviously, a communication between Mr. Tracy and any of the employees of the respondents is not binding upon the respondents.

Trial Examiner Gates: Admitted.

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Judge Ransom: Exception.

(Document referred to was received in evidence and marked Board's Exhibit 15, Witness Joy.)

Q. (By Mr. Moscovitz) This letter, Mr. Joy, is dated April 21, 1937. When did you see it on the bulletin

S. M. 1028

board?

Judge Ransom: Objected to as immaterial.

Trial Examiner Gates: Objection overruled.

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Judge Ransom: Exception.

A. I do not recall exactly. The letter was received on the 22nd, I believe. Mimeographed copies were made on that same day. Quite a large amount of them were distributed directly from the general council's office. I don't know how generally they were posted on the bulletin boards, but I did see some several days thereafter on the bulletin boards.

Q. (By Mr. Moscovitz) What bulletin boards? Where were the bulletin boards located? A. In the various halls and offices of the company.

2710 *Arthur Currie Joy—For N.L.R.B.—Redirect*

Q. Yes. And do you know who mimeographed these? A. I presume it was done by the stenographic bureau of the company, at the request of the secretary of the general council.

Q. Is that the way the work had previously been done for the plan? A. Yes.

Q. And where is the stenographic force located that did that work? A. On the eleventh floor of the building at No. 4 Irving Place.

2711 S. M. 1029

Q. And you say these letters were distributed through the plan's office in that building? A. Yes.

Q. And that is the way literature used to be distributed under the plan? A. Well, about the only thing that was distributed generally were the minutes of the meeting.

Q. Is that the way it used to be distributed? A. And they were mimeographed by the stenographic bureau for the secretary of the general council and sent by the secretary to the various members of the general council.

Q. Now, if you will look at this letter, and I fer
2712 you to the third paragraph, you will see the following:

"It is understood and agreed between yourself and your committee representing your group of employees, together with the writer, that no change in the present officer or representative personnel of the council will be required by the I.B.E.W."

And then there is a proviso immediately after that, that the men, members of I.B.E.W. in good standing, will be in good standing until December, when the laws of the council specify an election. Does this reference to your committee refer to the persons named by you who had gone to see Mr. Tracy? A. I don't know

S. M. 1030

whether he was referring to the five people that went to him or whether he was referring to the entire general council, the statement is somewhat vague on that.

Q. But whether they were the five persons or the general council, they would also be first, too, under the plan, representing the workers for whom you, too, are responsible, is that right? A. Yes, that's right.

Q. Now, as a representative under the plan were you directly responsible for any group of employees? 2714
A. I was a representative of the electrical engineering department employees.

Q. Did that mean that you represented 50? A. No, it was approximately 130.

Q. 130? A. Yes.

Q. And was that group of 130 represented on this committee when they went to see Mr. Tracy? A. It was not.

Q. And at the time that letter was distributed among the employees of the company, there had been no meeting of the I.B.E.W. local, is that right? A. There was actually no I.B.E.W. local at that time.

Q. There had been no meeting among the employees 2715
for any offices of the I.B.E.W.? A. Absolutely not.

S. M. 1031

Q. As I understand your testimony, it did not take place until May, 1937? A. That's right.

Q. Yes. A. I am not positive as to whether it was May or the latter part of April or just when it was, whether it was a week or two after the general council, they decided to accept a charter from the I.B.E.W.

Q. In any event it was after that date? A. Yes, sir.

Q. On the letter? A. Yes.

Mr. Moscovitz: That's all.

2716 *Arthur Currie Joy—For N.L.R.B.—Recross*

RECROSS EXAMINATION:

Q. (By Mr. Ransom) In this conference with Mr. Carlisle, when he made his appearance before the meeting of employees at 4 Irving Place, when his appearance was requested, did Mr. Carlisle, in answering the submitted questions, refer to the then recent decision of the Supreme Court of the United States as to the Wagner Act? A. He referred to it quite a number of times, in fact that was practically all that we heard.

2717 Q. Did he likewise say one or more times that he did not regard the Wagner Act as applicable to the company or these companies? A. That is right, he made

S. M. 1032

that statement in the beginning.

Q. Do you know whether these expenses incurred in work for the general council under the operation of the plan, let's say the stenographic and mimeographing expenses and other expenses of the council in connection with elections and meetings, whether they were charged to some account that related them to the operation of

2718 the collective bargaining plan? A. I don't know. I know that some individuals have councilmen—some individual councilmen have stated that when they were attending council meetings that they charged their time to different jobs than that that was ordinarily used, I believe, I never received such word myself.

Q. You don't know if they were charged to E.R.P.? A. No, sir.

Q. Or E.R.A. or something? A. No, I know nothing about the charges or the cost of the organization whatsoever.

Judge Ransom: That is all, Mr. Joy.

Mr. Moscovitz: That is all.

2719

Trial Examiner Gates: I have one or two questions.

Examination by Trial Examiner:

Q. (By Trial Examiner Gates) Do you belong to any particular local of the Independent Union? A. There are no locals, it is one organization, for the entire

S. M. 1033

system.

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Q. This hearing received two petitions for intervention, one by the Independent Gas and Electric Workers of Westchester County, is that in any way connected with your organization? A. They, I believe, have decided to join in with us and make one organization.

Q. But not separately? A. No.

Q. At the time the petition was filed, they might have been an entirely separate and independent organization, were they at one time? A. As to that I can hardly state, our men went up there to help them organize at night and we understand from the beginning that they were going to be affiliated with the organization.

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Q. Do you refer to various benefits for the employees which you have carried on under the plan, are those still being carried on? A. Well, welfare measures?

Q. That's right? A. So far as I know they are, I have received no word of any change.

Q. Did employees pay dues or anything like that for that purpose? A. Well, it was a separate organization, the Employees Association, an Association of employees

S. M. 1034

that existed in the New York Edison Company which

was just recently merged with the Mutual Aid Society, both of those organizations have been purely welfare organizations.

Q. Was their work in any way related to the old plan? A. Absolutely not.

Q. And you say—can you state how many individuals were on the general council? A. Well, the general council of the New York Edison Company, there were at least 28 at the time of its break up, I don't know how many there were on the general council of the re-
2723 mainder of the system companies.

Q. How many on all of the Consolidated Edison, do you know? A. Well, I don't know, there were two, you see.

Q. You maintained your identity more or less as the New York Edison Group? A. Yes, we did, the two were never merged.

Q. At the time of this letter from Mr. Tracy, Board's exhibit #15, referred to in the meeting, was there also a similar letter from somebody representing the United Electrical and Radio Workers or the C.I.O.? A. There was such a letter.

2724 Q. Was that posted on the bulletin board? A. I don't recall whether it was or not, excepting possibly there may have been one or two instances. Whether it was widespread or not, I don't know.

S. M. 1035

Q. Was it mimeographed, do you know? A. I think it was, I am not positive of that.

Q. Did it have any distribution at all? A. I believe, I cannot be absolutely sure—I believe that was mimeographed and was distributed out of the general council office, along with the I.B.E.W. letter.

Q. That is all.

RECROSS EXAMINATION:

Q. (By Judge Ransom) Mr. Joy, the Examiner just asked you about various of these provisions for the benefit of employees along lines of what are sometimes classed as employees welfare activities. Perhaps we can clear the record up a little about that. In the first place, how much vacation do you get a year with pay? A. Two weeks.

Q. And are you a weekly or a monthly employee? A. Weekly.

Q. You are a weekly? A. Yes. 2726

Q. Now, with respect to pay and provisions in the event of sickness, is there a certain amount of time and medical attention and the like that is paid for directly by the company? A. So far as I know, there is. I have seen no statement of any change. There has been many rumors around that the changes have been made.

S. M. 1036

Q. It has been the policy and the practice, let us say, leaving out any question of the present and recent action, that in the event an employee was ill, there was, for a period of time, an allowance of pay and medical attendance, and if necessary hospital care directly provided by the company? A. Part was provided by the company and part was provided jointly by the company and the mutual aid and employees association. 2727

Q. I am asking you now, before the Mutual Aid Arrangement comes in, which is a contributory arrangement, you say, is there a period of time before that where the allowance of pay and the medical care and hospital care is needed, and the like, are maintained solely at company expense without employee contribution? A. Not that I know of.

2728 *Arthur Currie Joy—For N.L.R.B.—Recross*

Q. You don't know about that? A. No.

Q. But in any event you know that in the event of illness, there is a time when the Mutual Aid Association comes in and makes provision? A. We have a sick benefit fund.

Q. And do you know in what ratio the employees and the company contributed to those funds? A. I believe it is supposed to be 50-50.

S. M. 1037

2729 Q. That is your understanding of the matter? A. Yes.

Q. Now, is there provided for the benefit of employees services of dentists and occulists? A. Dentists, I believe, are provided for jointly by the company and by the sick benefit funds which are paid for jointly by the employees and the company.

Q. Do you know anything about occulists? A. I don't know anything about the arrangement for occulists.

Q. Now, does the company provide for each employee certain group insurance? A. Yes.

Q. Are you sufficiently familiar with the basis of
2730 that to state what it is? A. That has apparently been different in the different companies.

Q. I am asking you now as to Consolidated Edison. There has been some variance between the companies in that respect? A. Yes, the Consolidated Edison, I believe, each member of what is now the Mutual Aid Society receives an insurance policy for $500.00, which is paid for by his membership fee in the Mutual Aid Society, and, in addition, may take out what is known as additional insurance, which is issued in blocks of $500.00 each, so that a total amount of insurance approximately equals the actual salary.

S. M. 1038

Q. Do you know in what ratios the company and the employee can contribute to the cost of additional insurance? A. Again, I understand it is 50 percent each.

Q. Now, has there been in effect for some time what is called a retirement plan for the payment of pensions or annuities to employees upon retirement after reaching a certain age and after certain periods of service? A. There is what is known as a provisional retirement plan.

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Q. Yes? A. Which was started possibly two years ago but for which the company has no obligation.

Q. You mean it is a non-contributory plan? A. That is correct.

Q. And it is a plan for which the company, do you know, as has been testified here, has set up some millions of dollars of reserve? A. I heard statements as to the amount appropriated to that reserve; I know nothing about it directly.

Q. And the continuance of that plan is within the managerial power and discretion of the company. That is, it is not a contractual obligation? A. Absolutely is not.

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Q. Do you know whether—I take it you do not know whether the continuance of that plan and these other welfare benefits are provided as a contractual matter under the bargaining agreement with the I.B.E.W.? A.

S. M. 1039

I have seen only one of those agreements and that one stated that the company, which was the Brooklyn Edison Company, has stated its intention to continue the provisional retirement plan, but without any obligation to do so, and also agreed to continue the other welfare measures substantially as at present.

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Q. Do you know whether the company also complies with the United States Social Security Act, the Federal Act? A. So far as I know, they deduct it from my pay.

Q. And is this independent Gas and Electric Union for which you were testifying, the one in behalf of which Mr. Redfield made the application for intervention here? A. Yes.

Q. Were you one of the employees who tried to intervene in the Federal Court this spring in Mr. Redfield's suit to contest as unconstitutional the United
2735 States Social Security Act?

Mr. Moscovitz: I object, Mr. Examiner, I don't see that this witness' participation in any other proceeding is at all relevant in this proceeding.

Judge Ransom: Well, to use Mr. Moscovitz's expansive phrase, I would like to show something of the background and the point of view of the employees who were making these accusations.

S. M. 1048

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Mr. Moscovitz: Well, I don't suppose even I am interested in an employee's point of view on Social Security legislation in this kind of a hearing.

Trial Examiner Gates: He may answer.

The Witness: I was not. I never heard of Mr. Redfield until after the organization of this unit.

Q. (By Judge Ransom) Did you hear of the suit which was brought by Mr. Redfield to enjoin and restrain the company from complying with the United States Security Act? A. I said that I had never heard of Mr. Redfield, I heard of a suit that was brought against the company.

Q. For that purpose? A. For that purpose.

Q. Did you know of any of the employees who tried to intervene in that suit? A. I did not.

Mr. Moscovitz: I object, Mr. Examiner, I don't suppose that Mr. Redfield is a party to this proceeding.

Trial Examiner Gates: But there was no question before the witness.

Mr. Moscovitz: I thought there was.

Trial Examiner Gates: He answered it.

2738 Mr. Moscovitz: I move then that the witness' answer be stricken.

Judge Ransom: He said he didn't know.

S. M. 1041

Trial Examiner Gates: It may stand.

Mr. Moscovitz: Is that what he said?

Judge Ransom: Yes.

Mr. Moscovitz: All right.

Judge Ransom: That is all, Mr. Joy, thank you very much.

2739 Q. (By Trial Examiner Gates) Were these several types of benefits which you mentioned on your cross examination ones which the plan or the general council participated in, the events leading to the establishment of those benefits? A. That is a very broad question. I would say that some of them were established through the efforts of the general council and some were not.

Q. Did you state on your previous testimony that Mr. Carlisle said that these several benefits would not be subject to bargaining with the I.B.E.W.? A. Will you repeat that?

(Reporter repeated the last question.)

A. I don't think I said any such thing as that, if I

2740 did I was very much in error. Mr. Carlisle said that it was the desire of the company to continue the benefits, but he did not say that they would not be negotiated or discussed with the I.B.E.W.

Q. Did he say anything about them in conection with the negotiations that they would be the subject of negotiation? A. Well, the question was put to him.

S. M. 1042

2741 Q. Apparently I misunderstood your testimony. A. The question, as I recall it, that was put to him, was to the effect that—"Would the benefit we had be abolished?". And his reply was to the effect that it was the hope of the company to continue all the present benefits.

Q. (By Judge Ransom) The question that was put to him was as to the truth of the rumors which had been in circulation that vacations, sick pay and other welfare measures were to be abolished, is that correct? A. Approximately, yes.

Q. And Mr. Carlisle said that, I think you previously testified that he said, "I have said on every occasion that the matters come up and that it is the desire of 2742 the company to continue those provisions as is." Is that correct? A. That is approximately correct.

Judge Ransom: Have you anything further? I have just one or two questions further on that same matter.

Trial Examiner Gates: Proceed.

Q. (By Judge Ransom) Were you present at the meeting between representatives of the management, that is, Mr. Carlisle and others, and the chairman, at least the chairman of the general council of the different companies, somewhere around December 22 or 23, 1936? A. I was not.

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Q. Was there reported back to you and your council

S. M. 1043

following that meeting what was said and what took place at that meeting regarding the provision of an additional reserve for the retirement plan? A. Practically all I know about that meeting is the formal statement that Mr. Carlisle issued, which was reproduced and contributed around the company. As I recall it, that statement did not say, or it said something about $2.00 additional being appropriated to the retirement fund.

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Q. For the benefit of the employees? A. I don't know about that.

Q. What I mean is this, in the public— A. It was distinguished from the public benefit, that is——

Q. Well, in the public utility business sometimes we refer to retirement as property, this was a provisional retirement plan for employees superannuated, retired or disabled. A. I don't recall the statement mentioned that specifically, but I assume that it did, that was what was meant.

Q. Well, do you know whether your council or any of the other councils had been taking up with the management of their respective companies the matter of further provision for the retirement and disability payments under that plan? A. I know the general council of the New York Edison Company had been negotiating at various times with management, but I understand others in the council had also, I don't know that definitely, the establishment of a contractual pension plan

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S. M. 1044

in which the employee would have a guarantee as to what he was going to get.

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Q. And do you also know whether any of them had been negotiating or making recommendations as to the size, as to the adequacy, of the reserves to provide for the retirement and disability payments? A. As to that, I don't know.

Q. You refer to a statement, a provision which you had seen, you said I think in the Brooklyn Edison agreement at some stage; I call your attention to exhibit B-14 for identification, which is the agreement effective June 15, 1937, between the Consolidated Edison
2747 Company and Local Union B-829, paragraph or article 6 thereof, paragraph 8, and I ask if this is the provision to which you refer:

"The Edison Company will continue in force for the duration of this agreement but without commitment or liability thereafter substantially its present system and provisions for the welfare of the employees, including the Green Mountain Lakes Farm, Inc., the present medical services, the company's sickness allowance, and all mutual aid benefits, the Savings and Loan Association and the allowances for jury duty, and military duty and group insurance. The Edison Company will continue
2748 to comply with the United States Social Security Act while this agreement is in effect unless the Act in meanwhile is adjudged to be invalid or inapplicable to such

an employer. The Edison Company further states but without modifying the voluntary non-obligatory character of the provisional retirement plan for employees, its present intention to continue for the termination of this contract its said provisional retirement plan for employees as now maintained." A. That sounds very approximately like the section I read in the Brooklyn contract.

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Q. After this meeting on April 22nd, to which Mr. Carlisle was brought by your committee, do you know whether you and any others, well, let's take at first, as to you—did you report to the employees in your division or bureau on what had been said by Mr. Carlisle on these various matters that came up? A. As I testified before, in my own particular division, the men gathered in one corner of the room at lunch time and after five o'clock and in other bureaus in my department the bureau representatives were given the representation and I don't know how they distributed it.

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Q. But in any event you reported to your employees in your division? A. Yes, sir.

Q. Directly? A. Yes.

Q. And orally? A. That's right.

S. M. 1046

Q. And in other divisions of your bureau, the various people were given the information likewise to pass it on themselves to the employees in those other divisions? A. I am speaking for my own department now.

Q. For your own department or your own bureau. Were you a department representative? A. Yes.

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Q. Or a bureau representative? A. Both.

Q. Then, speaking for your own department and bureau, that was the procedure which you followed with respect to bringing back to the employees what Mr. Carlisle had said on these different points? A. That's right. Some of the other bureau representatives were present at the meetings and there was no need for me to tell them. Others, I passed the word verbally to.

Q. That is all.

Q. (By Mr. Moscovitz) You testified that Mr. Tracy's letter which was addressed to Mr. Ganley had been issued through the general council's office at No. 4 Irving Place? A. Correct.

Q. And you also testified that you had seen it on various bulletin boards on company property in certain locations? A. I saw it on a few, I don't know how many.

S. M. 1047

Q. All right, now, did you also see mimeographed letters from the C.I.O. on bulletin boards? A. As I stated before, I think there were some of those.

Q. Did you see them? A. I mean, I think I saw them on some of the bulletin boards. I am not positive of the
2753 fact.

Q. So you don't know, is that it? A. No, I don't know definitely.

Q. Well, do you have any recollection of what any of those things contained? A. Well—as to what the contents of the letter was?

Q. The C.I.O. letter? A. Well, that was a letter from, I believe, Mr. Julius Emsback.

Q. To whom? A. To Mr. Ganley.

Q. Do you recall what it contained? A. It contained an offer of a charter to the general council or to the employees, I am not positive that it was to the general
2754 council, to the employees of a local for each company, the locals to elect officers within one month's time, I believe, under standard United Electrical and Radio Workers procedure.

Q. Yes. And did you see that letter about the same time that you saw the letter from Mr. Tracy? A. They were both received at the same time.

S. M. 1048

Q. Both received by Mr. Ganley at the same time? A. Yes.

Q. You know, as a fact, that Mr. Ganley did receive two letters, one from Mr. Wersing and one from Mr.

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Tracy at the same time. Is that right? A. It was not from Mr. Wersing, it was from Mr. Emsback.

Q. Yes, Mr. Emsback. Then you do know as a fact that the Tracy letter did appear on the bulletin boards? A. Yes.

Q. But you don't know whether or not the Emsback letter appeared? A. I am not positive but I think it did in some cases.

Q. In those cases where you think it appeared, where did you think it appeared, in what location? A. I believe that there was one in the glass enclosed bulletin 2756
board in my own bureau office.

Q. Where is that? A. 1350-S.

Judge Ransom: That is room 1350-S?

The Witness: Yes.

Q. (By Mr. Moscovitz) Where else? A. I also have a recollection that there was one on the bulletin board in the hall on the 13th floor.

Q. Yes. Where else? A. They are the only two

S. M. 1049

that I know of definitely, that I have a definite recollec- 2757
tion of, rather.

Q. Now, this glass enclosed bulletin board in 1350-S, is that a bulletin board which can be opened by any employee? A. It so happens that that particular one can. It was not locked.

Q. It can, but are the others locked? A. The others are locked.

Judge Ransom: You mean the others that you know about?

The Witness: Yes, as I know of.

Q. (By Mr. Moscovitz) The others are closed, so far as you know? A. Yes.

2758

Q. But this one was unlocked? A. Yes.

Q. What kind of a bulletin board is it that is in the hall on the 13th floor? A. I think it is a glass enclosed one. I am not positive of that, but I believe most of them are.

Q. Was that one locked or unlocked? A. I don't know.

Q. And who has the key to these bulletin boards? A. I don't know that.

Q. That's all.

2759

Trial Examiner Gates: Anything further of the witness?

S. M. 1050

Q. (By Judge Ransom) You don't know that this letter from the C.I.O. was mimeographed and was distributed at or about the same time Mr. Tracy's letter was distributed? A. I believe so.

Q. And do you recall whether the letter from the C.I.O. was read at this meeting on the afternoon of April 22nd, when, I think you said, what was it, 200 employees, who had been former council members and the like were present? A. I believe both letters were read

2760

at that time.

Q. Was this the first C.I.O. literature you had seen around the building? A. Literature?

Q. Yes. A. No, I wouldn't say that. Literature has been handed out of the doors of the building very frequently.

Q. C.I.O. literature has been around there for some time, hasn't it? A. It could not have been there so very long because the local C.I.O. group I believe had just shortly before broken off relations with the I.B.E.W. and had affiliated with the C.I.O.

Q. By that you mean several weeks or months? A.

I would say comparatively few weeks. I don't know exactly how many, I wasn't following it.

Q. That's all.

S. M. 1051

Q. (By Mr. Moscovitz) You never saw a foreman or a supervisory employee distributing C.I.O. application blanks; did you? A. No, I did not.

(Witness excused.)

2762

ROBERT McCORMICK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. McCormick? A. 533 73rd Street, Maspeth.

Q. By whom are you employed? A. The New York Edison Company.

Q. Where at? A. No. 4 Irving Place.

Q. What do you do? A. I think my title is receipt clerk. 2763

Q. When did you get that title? A. Well, just since the physical merger of the New York Edison with the Consolidated Edison.

Q. And how long have you worked for the New York Edison? A. Since June 28, 1929.

Q. You are still with the New York Edison? A. Yes.

Q. Were you a member of the employee representation plan? A. I was.

S. M. 1052

Q. Were you an officer or councilman? A. No.

2764 Q. Just a member? A. Yes.

Q. Did you became a member of any labor organization after that? A. I did, I joined the C.I.O.

Q. And were you a member of any labor organization before that? A. I was interested in another labor organization but I was not a member.

Q. I see, and what was that organization? A. That was the independent.

Q. Is that the organization that the gentleman who preceded you on the witness stand is a member of? A.
2765 That's the same organization.

Q. When did you become a member of the C.I.O.? A. Yesterday.

Q. What local do you belong to? A. Local 1212.

Q. And before yesterday when you became a member of the C.I.O. you weren't active in any C.I.O. activities, were you? A. No.

Q. You are just a member? A. That's right.

S. M. 1053

Q. In what location within this building are you employed, do you work? A. You mean what room?

2766 Q. Yes. A. Well, I work in room 938.

Q. With whom do you work? A. Well, I am in the commercial relations department.

Q. What is that department, what do they do? A. Well, I don't know exactly all the functions of the department, I know what we do.

Q. Well, what do you do? A. We handle incoming bills and we take the money from the collectors at 4 Irving Place and then we prove the deposits from all the various branch offices.

Q. Who is your boss? A. My immediate?

Q. Boss? A. That is Mr. Pippitt.

Judge Ransom: What did you say he was?

The Witness: Assistant clerk in charge.

Q. Assistant clerk in charge? A. Yes.

Q. (By Mr. Moscovitz) How many men does he have charge of? A. Well, he has 26 men.

S. M. 1054

Q. And they are directly responsible to him? A. Yes.

Q. Who is his boss? A. Well, his boss is Mr. McMannus, I believe his initials are I. J.

Q. What is his title? A. He is a supervisor. 2768

Q. And did Mr. Pippitt ever ask you to become a member of any labor organization? A. Well, yes, on April 23rd, he asked me.

Q. Is that 1937? A. 1937?

Q. Yes. A. He handed me an application card.

Q. Is that card the same as Board's exhibit #6?

(Board's exhibit #6 was passed to the witness.)

A. That is the same card.

Judge Ransom: May I ask from what the witness is reading?

Mr. Moscovitz: What are you reading from? 2769

A. I wanted to make——

Judge Ransom: What is that?

The Witness: These are just notes that I have.

Q. (By Mr. Ransom) Were they made by you? A. Yes.

S. M. 1055

Q. Typed by you? A. That is correct.

Q. (By Mr. Moscovitz) Go ahead. A. Well, Mr. Pippitt came up to me on April 23rd.

2770

Q. Were you at work all the time? A. Yes, I was at work.

Q. He asked you what? A. He asked me to sign an application card for the I.B.E.W. so I said that I did not believe that in signing that card I would have the opportunity to take advantage of my free choice in unions. I thought that he should hand me the card of the other two unions in the field, if it were to be the proper thing, so I said that I would think it over.

Q. Is that all you had to say to him at that time?

2771 A. That's all that I said to him at that time.

Q. Now, at that time were you interested in some other labor organization? A. At that time I was interested in another labor organization.

Q. Is that the independent organization? A. Yes, sir.

Q. That's the independent gas and Electric Union? A. That's right, yes, sir.

Q. Well, what happened the next day? A. Well, the next day, Mr. W. J. Wiscowsky——

Q. Who is he? A. Well, he works in the bookkeep-

2772 S. M. 1056

ing, I don't know, the commercial relations department, he was called in by a Mr. Smith who was assistant cashier at that time, because Mr. Pippitt could not explain satisfactorily the nature of the I.B.E.W.

Q. (By Mr. Moscovitz) Well, was Mr. Pippitt in the room? A. Mr. Pippitt was in the room at that time.

Q. Well, let's get the course of events when you went to work the next day, did you go right to Mr. Pippitt? A. I see. When I went to work the next day I was called into conference, well, I was called in to hear Mr. Wiscowsky speak.

Q. Who called you? A. Well, I simply came into the room from downstairs when my work was finished there, but Mr. Wiscowsky had been called, because Mr. Pippitt could not explain satisfactorily the nature of the I.B.E.W. to the group.

Judge Ransom: I move to strike out the witness' conclusion as not binding on the respondents.

Trial Examiner Gates: It may stand but it seems to me a little more detail is needed to make it of any importance. 2774

Q. (By Mr. Moscovitz) Now, when you finished your work and you went downstairs did you say, or upstairs? A. Well, shall I explain just what I did, just how I came to be there?

S. M. 1057

Q. Yes. A. Well, at that time I came in to work at two o'clock.

Q. In the afternoon? A. In the afternoon, immediately went down to the collector's room until all the collectors had turned in and that deposit had been proved. The deposit was usually proved around five-thirty. So at five-fifty I came up and Mr. Wiscowsky was already there talking to a group of men. 2775

Q. Now, were they a group of men from your own department? A. Yes, and the names of some of those men are Price, Curley, Rosenthal, Rooney, Goebel and myself and others, they are all working in that section.

Q. And was Mr. Pippett there? A. Mr. Pippett was there and the reason Mr. Wiscowsky had been called in——

Q. How do you know why he was called it? A. Well, the only reason I know why he was called in is that

Mr. Pippett was under obligation to the assistant cashier to fill a quota.

Q. How do you know that? A. Because on the second evening, that is the 23rd, I believe.

Q. Of April? A. Of April, I saw Mr. Pippett making out a memorandum sheet for Mrs. Smith, the assistant cashier, and in one column were tabulated the names of those who had not signed the application cards for

S. M. 1058

2777 the A.F.ofL, and in another column were the names of those who had signed cards and the whole procedure was distasteful to Mr. Pippett and he——

Judge Ransom: I move to strike out the witness' written argument, whoever wrote it, as purely a matter of argument and conclusion.

Trial Examiner Gates: It may be stricken. I think we ought to get in the whole procedure.

The Witness: Well, you see he since told me he was under pressure from inside.

Q. (By Mr. Moscovitz) Now, you saw this memo-
2778 randum being written? A. Yes, I saw a memorandum being written.

Q. By Mr. Pippett? A. Yes, that's right.

Q. And you have already told us what you saw, the names? A. Yes.

Q. Did you talk with Mr. Pippett about it? A. Yes, I talked to him.

Q. At that time? A. Not at that time, but subsequently.

Q. How many days later or when? A. After the attempt to procure these signatures on the application cards, Mr. Pippett did not have anything further to do with it.

S. M. 1059

Q. Well, what attempt are you referring to now, what day, the 22nd and the 23rd of April? A. Well, now, yes, the 22nd and the 23rd.

Q. Well, are you referring first to the time when he spoke with you and you told him you wanted to think it over? A. That was on the 22nd.

Q. All right, then on the 23rd, Mr. Wiscowsky—you walked into Mr. Wiscowsky? A. That's right.

Q. Who was with Mr. Pippett and a group of men? 2780
A. Yes.

Q. Now, tell us——

Judge Ransom: Can you fix the time of day that was?

The Witness: 5:30.

Q. (By Mr. Moscovitz) 5:30? A. Yes.

Q. Was that after working hours? A. My hours were two to ten.

Q. Is that the same as the hours of the other men? A. Yes, all the men there at that time were on their working hours.

Q. All right, now, when you walked into that meeting, what was taking place? A. Mr. Wiscowsky was standing in the middle of this aforementioned group, and he was explaining to them why they should join 2781

S. M. 1060

the A.F.ofL. and he gave certain reasons which I put down on this sheet of paper. Is it alright to read them off?

Q. Yes, if Mr. Ransom doesn't have any objections.

Judge Ransom: I haven't any objections as yet.

2782 A. He said that it was advisable to join the American Federation of Labor immediately before the company closed shop with the A.F.ofL. In that case the initiation fee would go up to $100.00 or more.

He said that the company has always treated its employees well, therefore the employees should treat the company in the same way by joining the A.F.ofL.

Since the majority of the employees had joined this union, the I.B.E.W. was the sole bargaining agents for all.

2783 Q. When did you write this? A. This is a copy of the affidavit I submitted.

Q. I see. That is the information then which you gave to the Labor Board; is that it? A. That's right, yes.

Q. Now, did Mr. Wiscowsky make any further statement at that time as far as you can recall? A. Well, I tried to recall what he had to say. I wrote these three very definite things down. I do not wish to say he said anything more because I don't recall it definitely.

S. M. 1061

2784 Q. I see. And did you find out at that time why Mr. Wiscowsky was there making this speech? A. Well, Mr. Pippett failed to get enough signatures to satisfy himself and——

Judge Ransom: I move to strike out the witness' statement. It may be difficult for the witness to tell what goes on in his own mind without referring to an affidavit.

Trial Examiner Gates: It may be stricken.

Q. At any rate, Mr. Wiscowsky was there, which is an indication that——

2785

Judge Ransom: I move to strike out what is an indication of. It is immaterial.

Trial Examiner Gates: It may be stricken. I suggest that you proceed with questions and answers.

A. You asked me why Mr. Wiscowsky was there; didn't you?

Q. (By Mr. Moscovitz) That's right. A. Well, it was evident from what he said that he was there to persuade us to join the I.B.E.W.

2786

Q. Now, do you recall what else happened at that time? A. At that 5:30 meeting?

Q. Yes. A. Yes. After the meeting, Mr. Pippett distributed cards for the people to sign that were listening to Mr. Wiscowsky. Some of them signed and some of them did not.

Q. Did anyone else distribute cards at that time?

S. M. 1062

A. No, Mr. Pippett was distributing all the cards that were distributed.

2787

Q. Did Mr. Pippett tell you or the group why Mr. Wiscowsky was there, where he had come from? A. No, I wasn't present at the time Mr. Wiscowsky was summoned, so I couldn't say.

Q. Do you know where he comes from? A. Yes, he works on the 10th floor.

Q. What is his job? A. He is a supervisor, I believe, of cash posters.

Q. What is cash posters? A. Well, he applies bill receipts to the books.

Q. Do you know how many persons he has working under him? A. No, I have no idea because I don't have any dealings with them.

2788 Q. I see. I interrupted you. You had not finished your statement, had you? A. I simply said I didn't have any dealings with that part of the business.

Q. I see. Now, was it reported to you why Mr. Wiscowsky was there? A. I heard from the other fellows at the meeting that he was called because Mr. Pippett was dissatisfied with what he had done.

Judge Ransom: I move to strike out the statement.

2789 S. M. 1063

Trial Examiner Gates: It may stand.

Judge Ransom: Exception. It is wholly hearsay.

Q. (By Mr. Moscovitz) Who are these other fellows? A. I had their names here. I read them off before. Shall I read them off again?

Q. Are they the same fellows? A. Yes.

Q. Is that about the part of the meeting that you missed? A. When I came up I heard substantially what Mr. Wiscowsky has to say.

2790 Q. But this statement by the men to you that Mr. Wiscowsky was called in because Mr. Pippett had not made his quota? A. Yes.

Q. Was that a statement that was made by Mr. Pippett to the men? A. It wasn't the statement made by Mr. Pippett to the men. It was a statement made by the men to me.

Q. Not—were they quoting someone when they made that statement to you?

Judge Ransom: Object to as leading and improper. If evidence could be made against the respondents that way, I, at least, respectfully protest.

2791

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

The Witness: Well, I wish you would repeat that question.

S. M. 1064

(Question read.)

Judge Ransom: May the record show that the witness asked to have the question repeated?

2792

A. They saw the process Mr. Pippett went through in procuring Mr. Wiscowsky. He applied to Mr. Smith who sent Mr. Wiscowsky.

Q. (By Mr. Moscovitz) Now, was it the same evening that you saw Mr. Pippett making out the memorandum sheet for Mr. Smith? A. That was on the 23rd of February.

Q. That would be the next day? A. That was the same evening as the speech, yes.

Q. That all happened on the same day then?

Trial Examiner Gates: The witness said February.

2793

The Witness: I am sorry, April.

Q. (By Mr. Moscovitz) April? A. Yes.

Q. 1937? A. 1937.

Q. Right. Did you sign the card at the meeting addressed by Mr. Wiscowsky? A. No, I did not.

Q. Were you approached after that meeting again to sign a card? A. Yes, Mr. Pippett did approach me on the following evening, on the 24th.

S. M. 1065

Q. While you were at work? A. I am not quite sure about that date, but it was the next day.

2794 Q. All right, was this while you were at work? A. As soon as I had come in to work, he approached me and asked me if I wished to sign and I said no.

Q. Just what did he say to you? A. Well, he simply came up to see me and said, "McCormick, are you going to sign now or not?"

Q. What did you say? A. I said I didn't think I had had sufficient time to determine which union I should join, therefore I wouldn't sign it.

Q. Did he approach you again after that? A. No,
2795 nothing further was heard.

Q. Did you know whether or not Mr. Pippett continued that activity with other employees after he last spoke with you? A. I know that he did not.

Q. He did not? A. No.

Q. How do you know that? A. Well, I am in a position to watch his activity in the office.

Q. Did you talk with Mr. Pippett further about it? A. Yes, I did. Several days later, say five days later, I did.

S. M. 1066

2796 Q. And what was your discussion with him about it? A. Mr. Pippett said that he didn't like what he had to do.

Q. Yes. A. And that as far as he was concerned, he was glad that the business was over.

Q. Is that all? A. No, that is substantially what he had to say.

Q. What did you have to say on that? A. Why, I didn't have very much to say on it.

Q. Were you glad it was over too? A. I didn't consider it over at all. I considered it just beginning.

Q. Why do you say that?

Judge Ransom: Objected to as immaterial.
Trial Examiner Gates: He may answer.

A. Well, I knew that the union question was yet to be settled by referendum if possible.

Q. It had not been settled in that way yet, has it? A. It has not been settled in that way yet.

Q. That's all.

CROSS EXAMINATION:

Q. (By Judge Ransom) May I see this interesting 2798
paper?

(Witness hands counsel paper.)

When did you prepare this, or when was it prepared? A. Well, I don't quite recall the date, but I did submit that to the National Labor Relations Board.

S. M. 1067

Q. You don't recall what date? A. No, I don't recall what date.

Q. Can you give me any idea when you prepared it? A. I prepared it the night before I submitted it.

2799

Q. Well, when did you submit it? A. I don't recall.

Q. Well, when did you submit it? A. I don't recall.

Q. Haven't you any idea? A. No, I have not.

Q. Was it in June or in May? A. It was in May.

Q. Where did you prepare it? A. I prepared it because——

Q. Where? A. Oh, where? In my home.

Q. Who was there? A. I was alone.

Q. No one else? A. No.

Q. Whom did you talk to about making the affidavit? A. I didn't talk to anyone. I saw the form of an affidavit in a book and decided to write this affidavit in the first person instead of the third.

2800

S. M. 1068

Q. No person had spoken to you about making any affidavit? A. Well, I realized that——

Q. Had any person spoken to you about making an affidavit? A. Naturally, several people had spoken to me.

Q. Who had spoken to you about making an affidavit? A. Mr. Crowell of the independent.

Q. Do you know his first name? A. Mr. Harry Crowell.

2801 Q. Anyone else? A. Well, as far as I am concerned, no.

Q. What do you mean as far as you are concerned? A. Well, Mr. Crowell's suggestion to me about the affidavit was enough. It was the determining factor in my preparing it.

Q. You said two or three people had spoken to you about it. Who were the others? A. Certain members of the independent union.

Q. Who? A. Mr. Schacht. I don't know his first name.

Q. Who else? A. Mr. Gideon.

2802 Q. Who else? A. Mr. Voosen, V-o-o-s-e-n.

Q. What did you do with the affidavit when you say you prepared it? A. I took it to Mr. Moscovitz.

S. M. 1069

Q. You took it to him personally? A. Yes.

Q. At the National Labor Relations Board? A. Yes.

Q. Who suggested that you take it to him? A. Mr. Crowell.

Q. And can you fix at all the date when that took place? A. Yes, it was on June 1st, Tuesday, June 1st.

Q. How soon was that after you prepared it? A. I prepared it the night before.

Q. Now, you are a receipt clerk? A. Yes, sir.

Q. That is your payroll title? A. Yes.

Q. Your duties relate solely to incoming bills that have been sent to consumers and the money collected on them? A. That's right.

Q. And you check these receipts and check the deposits of the money in the bank account? A. That's right.

Q. And that is your sole duty in that respect? A. Yes, that's all I do.

Q. Now, you say Mr. Pippitt is an assistant clerk in 2804
charge of the receipt clerks? A. That's right.

S. M. 1070

Q. What? A. I think the section is called receipt proofs and records.

Q. Receipts proof and records? A. Yes.

Q. He is an assistant clerk? A. Yes.

Q. Is that his payroll title? A. Yes, assistant clerk.

Q. Is that right? A. Yes.

Q. There are about 26 men in that department? A. About 26.

Q. And they work under Pippett's direction? A. Yes, 2805
Mr. Pippett of course is under Mr. McMannus.

Q. The supervisor of the department is Mr. McMannus? A. That's right.

Q. Do you know whether Mr. Pippett is a member of the I.B.E.W.? A. Mr. Pippett is a member of the I.B.E.W.

Q. Do you know whether Wiscowsky is a member? A. I heard Mr. Wiscowsky say that he had gone over the night before he spoke to us with a group of employees from his section and that he had signed application cards for the I.B.E.W.

Q. Well, at the time that he was speaking in this little group in your bureau, he was a member? A. That's

S. M. 1071

right.

Q. Mr. Pippett was a member? A. Yes.

Q. Now, this is the assistant cashier? A. I think his name——

Q. Well, you said the assistant cashier's name was Smith? A. Smith, yes, sir.

Q. Do you know whether he is a member? A. Well, he wasn't eligible to join the union.

Q. Oh, you think he was in the supervisory class?

2807 A. Yes, he was superior to Mr. McMannus.

Q. Mr. McMannus, that is the assistant cashier, he was somewhere up the line above? A. Above.

Q. Above your supervisor? A. Yes, I believe he was directly responsible to Mr. Aiken.

Q. Mr. Aiken? A. Of Mr. MacNamara.

Q. Who is Mr. MacNamara? A. Mr. MacNamara is the treasurer.

Q. Well, now, tell us about this 5:30 o'clock meeting, just where it was held? A. Well, it was held right in the office in the 9th floor in room 938.

2808 S. M. 1072

Q. You mean that is where you work day in and day out? A. Yes.

Q. You have spoken of it, or at least Mr. Moscovitz has spoken of it as a meeting, how many were there, how many were standing around? A. Well, may I have that sheet?

Q. Don't you know without reference to your sheet? A. Well, I can tell you exactly if you will let me.

Q. Well, I would like to see if you have any recollection aside from this precious affidavit. A. About 13 I should say, about half of the force.

Q. And this group of 13 was standing around Mr. Wiscowsky and he was talking? A. That's right.

Q. Was he making anything that you would call a speech or was he just explaining the matter as men will do in a group? A. Well, I think he was really going so fast as declaiming for that.

Q. You think he was actually declaiming? A. He got excited about it.

Q. Well, I suppose members of the labor organization do, I have seen that; were men just standing around, this faithful 13? A. Well, there—they were very attentive, they were desirous of knowing something really substantial about the organization they were being asked 2810

S. M. 1073

to join.

Q. And Mr. Wiscowsky thought as a member he could give it to them and they thought that he could? A. That's right.

Q. You seem to be very hesitant about your ability to state the number of men without referring to this affidavit? A. I don't like to talk into the air, after all, I like to be exact in what I have to say as far as possible. 2811

Q. Now, you stated talking in the air, that there were 13? A. That's right.

Q. Now, I ask you whether you find that or any number stated in this affidavit for which you were so anxious? A. Well, no, but I could remember the other individuals who were present if I saw the names of those also present.

Q. Well, how many men have you got shown in this affidavit as present in this little group? A. I have got 1, 2, 3, 4, 5, 6.

Q. That is including yourself? A. That is Mr. Pippett.

Q. That is 6 including Mr. Pippett? A. No, there is Price, Curley, Rosendahl, Rooney, Goebel, I and Mr. Pippett.

Q. That is how many in all? A. Well, that is 1, 2, 3, 4, 5, 6, 7, but there were three others present whose names I can't remember now.

S. M. 1074

Q. So you say now ten? A. So I say ten, yes, sir.

2813 Mr. Moscovitz: That does not include Mr. Wiscowsky?

The Witness: No, sir.

Mr. Moscovitz: That makes eleven?

The Witness: Well, I was speaking of the employees in our group, not Mr. Wiscowsky.

Q. (By Mr. Ransom) That was with Mr. Wiscowsky, then, you would say eleven? A. Yes.

Q. You don't want to change it any more? A. Well, you see the idea I was up against difficulties, because people were moving in and out preparatory to going to lunch.

2814 Q. Just what was the nature of your activity in behalf of the Independent Gas and Electric Union? A. Well, naturally I tried to recruit members for the organization.

Q. In your department? A. In my section.

Q. In your section? A. Yes.

Q. Elsewhere in the company? A. Yes, also through the several places, throughout the system.

Q. When did that start? A. That started on April 29.

S. M. 1075

Q. And continued up until when? A. Continued up to——

Q. Yesterday? A. Yesterday.

Q. And you did what you could along those lines practically every day? A. Well, not within the last week.

Q. That is, you weren't as active about it in the last week? A. No, that's right.

Q. Did you get many applications? A. Well, I don't recall just how many I got.

Q. Can't you give this Board any idea of how many you got? A. Why I have no idea of what I actually got.

Q. Did you talk to these employees on the property? A. Oh, no. 2816

Q. Never on company property? A. No.

Q. What? A. Unless it was during my lunch hour.

S. M. 1076

Q. I am asking you now on the company property? A. Occasionally I did speak with them, the employees in my group during my lunch hour.

Q. On company property? A. That's right.

Q. As a matter of fact, isn't it true that your solicitation of members during this time for the independent union took place principally on company property? A. No, I should not say that at all, as a matter of fact 2817 principally it took place off the company property, distribution of literature and things like that.

Q. Why did you distribute it? A. Why?

Q. Where? A. Where?

Q. Yes. A. At the store, 4 Irving Place, and 110th St. Plant, out in Flushing.

Q. Not on company property at those locations, you say? A. No, unless the sidewalk is company property.

Q. But did you distribute literature in behalf of the independent union? A. Yes, I did.

Q. During lunch hours at 15th Street? A. No.

S. M. 1077

Q. Never? A. No.

Q. You are sure of that? A. Yes, positive of that.

Q. Mr. Wiskowski was not a man who had any power to hire or fire employees in your department? A. No.

Q. Nor any other department? A. No.

Q. As far as you know? A. No, sir.

Q. And Mr. Pippin has no power of employment or discharge in your department? A. No, but I believe there is something that I can say in answer to that

2819 question.

Q. Well, I have no doubt there is something you can say in respect to any question, we will stipulate that, especially if it is in your affidavit; I am asking you now whether he had any power to hire or fire? A. Well, it is impossible for me to answer the question truthfully without making a statement.

Q. Well, I'll admit that as to any question I may ask you, but— A. Therefore, how can I answer yes or no?

Q. Well, do you think you can answer that he has or

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2820 has not? A. Well, I can say that they can exert some pretty strong influence toward the getting rid of certain employees.

Q. Do you wish to make that argument, do you, that while he has no power to hire or fire— A. He can make recommendations which would result in an employee being fired.

Q. You are sure of that? A. Oh, yes, I am very sure of it, I have seen it happen.

Q. But then your statement is that he has no power to hire or fire but has power to make recommendations? A. That's right.

Q. And the decision on any question of either employment or discharge rests higher than Mr. Pippin? A. That's right.

Judge Ransom: That's all.

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Did you ever see Mr. Pippin, Mr. Smith or Mr. Wiskowski or any other supervisory employee call together groups of employees for the purpose of getting them to become members of the Independent Gas Workers Union? A. No, I did not. 2822

Q. Or to become members of C.I.O.? A. No, that was my objection at the time, being called together to join the I.B.E.W.

Q. You wanted to decide for yourself? A. I wanted

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to be presented with cards from all three unions.

Q. At least, you wanted to decide yourself, didn't you? A. Yes, I did.

Q. (By Mr. Ransom) You decided, didn't you? A. Yes. 2823

Q. What? A. I had made my decision, yes.

Q. (By Mr. Moscovitz) After some preliminary interference by certain persons, is that right? A. Yes.

Judge Ransom: I take it he has not testified to all the interference that took place as far as the C.I.O. That is all.

Mr. Moscovitz: Thank you.

(Witness excused.)

Trial Examiner Gates: We will recess for five minutes.

(Whereupon, a short recess was taken.)

2824 *Edward Gideon—For N.L.R.B.—Direct*

AFTER RECESS.

EDWARD GIDEON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. Gideon? A. 284 East 31st St.

Q. By whom are you employed? A. Consolidated

2825 S. M. 1080

Edison Company.

Q. How long have you worked for them? A. Seven years.

Q. What do you do? A. I am a service man in the customers' service department.

Judge Ransom: Will you keep your voice up? I would like to hear it. What is it that you do?

The Witness: Customers' service department, a service man.

2826 Q. (By Mr. Moscovitz) What are your duties? A. To service all types of gas supplies.

Q. Were you a member of the employees representation plan? A. I was.

Q. Did you become a member of a different organization? A. I have.

Q. When? A. April 30th.

Q. 1937? A. 1937.

Q. What organization? A. Independent Gas & Electric Union.

Q. Are you still a member of it? A. I am.

Q. Do you hold office? A. I am acting as financial secretary.

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Q. And can you tell me whether or not at any time after you became a member of the independent organization, you were asked to appear at the Consolidated Edison Company offices at No. 4 Irving Place for the purpose of discussing labor activity? A. I was.

Q. Do you recall when that was? A. On May 3rd, at two o'clock.

Q. 1937? A. 1937.

Q. Who told you to appear? A. Well, in our department we contact our office by telephone if we are on the 2828
district. So the dispatcher who dispatches our work to us notified me that our supervisor——

Q. Who was your supervisor? A. Alfred Hanson.

Q. What is his job? A. Sort of acts in a supervisory capacity like an assistant foreman. He dispatches the work over the telephone to the districts.

Q. How many men— A. 29 men.

Q. That he dispatches work to? A. That's right.

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Q. When does he notify you? A. Well, he notified me at ten o'clock, when I made my one o'clock ring, 2829
that I was to go down to the general office, No. 4 Irving Place, and meet Mr. Muelenberg, assistant general superintendent of the Customers' Service Department, and so—and I was to take time off and charge it to personal reasons, so I went down there.

Q. Did he tell you what you were going there for? A. There was no reason given.

Q. Did you get paid for the time? A. I got paid for the time.

Q. You went? A. I went.

Q. Tell us just where you went and what happened.

2830 *Edward Gideon—For N.L.R.B.—Direct*

A. Well, we were there, there were several others, about ten in number, that were informed, and we would agree to meet at the information booth and then proceed to Mr. Muhlenberg's office. When we arrived at the information booth we were told to report to his room on the 18th floor.

Q. Is that the information booth at No. 4 Irving Place? A. That's right, 4 Irving Place.

Q. And who were the other men with you? A. Oh, there was a Mr. Nuttle, who was a service foreman.

2831 Q. A service foreman? A. That's right.

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Q. Did he have men working under him? A. That's right.

Q. How many? A. About 30 in number.

Q. Yes. A. And Mr.——

Q. Any other foremen? A. Yes, there was another foreman, I can't think of his name.

Q. Mr. Schoch? A. Mr. Schoch, he is assistant foreman.

Q. Was he there? A. He was there.

2832 Q. Is that John Schoch? A. John S. Schoch, yes.

Q. Where is he assistant foreman? A. He is assistant foreman in the same department, Customers' Service, has a district, and then there was Mr. Voozen.

Q. And Mr. Voozen? A. Yes.

Q. Yes, and Mr. Weisenberger? A. Yes.

Q. Is that Frank Voozen? A. Frank Voozen.

Q. What's his job? A. He is a service man in the York Avenue division of the Customers' Service.

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Q. A regular worker like yourself? A. That's right.

Q. And who was this other man, Weisenberger? A. Charles Weisenberger.

Q. What's he do? A. He is in the same capacity as myself.

Q. Yes. A. And there was also a Mr. William Steinacher, the same capacity as myself and Mr. Carl Kitelberger, the same capacity as myself, who were off that day and who were notified by phone to come in and were paid time and a half to come in, to attend this meeting, and then there was Mr. Boadray, Charles Boadray, who has charge of records, to my knowledge, 2834
I think it's records, in my office, the customers' service department, Mr. Stanley Ross and Mr. Barton Donnelly.

Q. What do they do? A. I don't know exactly what their capacity is, I think they are classified as clerks, they don't hold any supervisory position, and I am trying to think of this other foreman's name, I know it just as well as my own.

Q. Mr. Kennedy? A. No, Mr. Kennedy was at the meeting, he is the same.

Q. J. A. Kennedy? A. J. A. Kennedy.

S. M. 1085 2835

Q. He has the same job as yours? A. Same job as my own.

Q. Who else? A. Mr. Meyer.

Q. Mr. Meyer? A. Herman A. Meyer, he is the service foreman.

Q. Where is he service foreman at? A. In the appliance maintenance division of the customers' service department.

Q. How many men does he have under him? A. Approximately 30.

Q. Now, these men who hold the same job as you do, do they work throughout the whole area? A. We work throughout Manhattan.

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Q. Throughout Manhattan? A. Yes, sir, some of the men are office men, others are district men that work out in service in the districts.

Q. And you all met at the information booth and you were told there to go where? A. Well, when we met at the information booth, why, Mr. Boadray said that we were to go to room 18—I don't exactly remember the number, but it was a room on the eighteenth floor, which developed out to be the general council room of the Consolidated Gas Employees Representa-

2837 tion Plan.

S. M. 1086

Q. Yes. A. We all met there and were talking around, waiting for Mr. Muhlenberg to come in to see us. Mr. Muhlenberg did not appear. Mr. Parker, who at that time was chairman of the employees representation plan of the Consolidated Gas Company, came in.

Judge Ransom: Just a moment. I move to strike that out. The witness could not possibly know, he may state if Mr. Parker was at one time chairman of it, but he is undertaking now to

2838 testify about the third of May.

The Witness: Mr. Parker was the chairman at that time.

Q. (By Mr. Moscovitz) You didn't know of any change? A. I didn't know of any change at that time when I came in the room.

Judge Ransom: I move to strike out the witness's answer.

The Witness: Mr. Parker was still chairman, as far as I was concerned.

Trial Examiner Gates: Do you know whether the plan was still in existence?

The Witness: To my knowledge the plan was still in existence at that time.

Judge Ransom: I move to strike.

Trial Examiner Gates: It may stand.

Judge Ransom: It is purely hearsay and entirely contrary to all testimony thus far in behalf

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of the government.

The Witness: Well, I don't want to be, appear to be arrogant, but it is not hearsay, I 2840
know Mr. Parker was the chairman because he had offices there, I have been in contact with him all during the week.

Trial Examiner Gates: You may continue.

Q. (By Mr. Moscovitz) You had been in contact with him all during that week? A. That's right.

Q. The week immediately preceding the 3rd of May? A. That's right.

Q. At that office? A. I called at that office, yes.

Q. And did he spend all of his time at that office? A. That's right.

Q. In the employee representation work? A. That's 2841
correct.

Q. And you called him regarding employee representation plan work? A. Yes, we called him regarding the union activities, they had started, and regarding the company's recognition of the I.B.E.W. I wanted to find out information about it.

Q. You wanted to find out if it was so or not? A. That's right, I wanted to find out just what they were doing about it, because the men that I was working with wanted to know the information and they could

S. M. 1088

not get any information.

Q. Well, what did he tell you? A. Well, he told us that, it's a long story, I mean, I would have to go back and start from the very beginning and work all the way through, if you want to hear, do you want me to do that?

Q. Yes. A. Well, when the management recognizes the I.B.E.W. as the means of collective bargaining, as soon as I read about it in the paper the following
2843 morning, I immediately called Mr. Parker on the phone and asked him what he was going to do about it and he said that, well, we had four alternatives, we could either join the I.B.E.W., we could have our own independent organization or we could do nothing about it at all, just do nothing at all, and I said, "What are you going to do?" Well, he says, "I have some seven thousand signatures expressing the desire of the employees in the plan to continue along whatever lines the employees want." That is a couple of weeks previous to all this breaking out why he had distributed cards and that had all the members of the plan sign them if they
2844 wished to continue on in the same lines as they had before in the employee representation plan.

So I said, "Well, what are you going to do about it?"

S. M. 1089

So he said, he was very vague, he didn't know, so the following morning, as he works in my department, he does not work there, I mean, he is assigned to my department, he hasn't worked there in the last few years, but he came up for his pay the following morning, which was Thursday morning, for his pay and naturally being the general council chairman the men all crowded

around him and questioned him on what was going to be, and he said the management wanted the A.F.of L. and he thought it would be the best for the management, or for the members to join the A.F.of L., but they were going to hold a general assembly meeting on Friday.

Q. When was it that he told you that? A. This is about two days, right after the management had recognized the——

Q. The I.B.E.W.? A. The I.B.E.W. So there was some accusations made there at this meeting among the 2846
men there, that Mr. Parker and the representatives had sold out the employees, and Mr. Parker didn't take it very kindly, and attempted to hit one of the men, but he was stopped.

Then things were quieted down a bit, and then we instructed our representatives to go down to this general assembly meeting and insist that we wanted no part of any national or international organization; that we wanted our own independent organization, and he said he would go down there.

S. M. 1090

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He came back the same afternoon and he brought back these I.B.E.W. cards and said that the management wanted the I.B.E.W. and the best thing he could see that we had better join the I.B.E.W.

Q. When was it that he told you that? A. That was the afternoon of the general assembly, I guess it was Friday afternoon.

Q. Three days after the announcement? A. That's right.

Q. Regarding the I.B.E.W.? A. That's right.

Q. Where was the meeting held? A. Which meeting is that?

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Q. The afternoon meeting? A. With the man that brought the cards back, do you mean?

Q. Yes. A. That was held at 708 First Avenue, where my particular district has its meeting place. We meet there mornings and nights.

Q. Is that Consolidated Edison— A. That is the old New York Edison Company building.

Q. Yes. A. So he distributed the cards around and said that he had already signed up and paid his $1.50. Naturally, there was quite a lot of discussion about it

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S. M. 1091

and we asked the foreman what did he think we ought to do.

Q. Who is the foreman? A. Walter Purdy.

Q. Who is he foreman of? A. Foreman of the appliance parts division, the customers' service department. I am under his supervision.

Q. How many men does he have under him? A. Approximately 30 men. I might say for the record that 11 the foremen in the appliance parts division have practically 30 men under them, so we questioned

2850 Mr. Purdy on it because we thought that he would have some inside information on what was what, so there was a lot of feeling that the men did not want to sign, so finally Mr. Purdy said, "Well, I am going to sign," and he signed.

On the basis of that, about ten out of the thirty men signed. So I didn't sign, and several others didn't sign. We were to have at least the week-end to talk it over. So during the week-end, why, we met amongst ourselves individually, you know, and we talked it over, and we came back on Monday and decided that we would not join, either the American Federation of Labor or any national organization.

Q. That is, you didn't want either the American Federation of Labor or the C.I.O.? A. No, we did not.

S. M. 1092

Q. All right. A. So things ran along for a week until Friday of the following week, which is April 30th, and we decided we would hold a meeting of a few men and see if we could arrange to have a mass meeting somewhere where we could get a clear picture of what all this was. So we arranged to have a meeting and we met at 152 Third Avenue, Teutonia Hall, at half past 2852
five.

Q. That was not company premises? A. No, that was not company premises. And we took up voluntary contributions amongst ourselves to pay for it, and we invited approximately 20 men. There were 300 men there that night, and at that meeting we invited Mr. Crowell and Mr. O'Brien from the New York Edison Company, who had gotten up petitions to ask the employees whether they wanted an independent organization or not.

And so we started this meeting and planned for this mass meeting, and the mass meeting was to be held the 2853
following week, May 5th, on Thursday night. So, it so happened that Teutonia Hall, as all halls of that nature, has a bar, so we, after the meeting, the meeting was conducted in a very orderly manner by Mr. John Schacht, and at the conclusion of the meeting, why, several of the men, of course, went to the bar to refresh themselves, so nothing happened except that we had gone ahead and made different plans. We had picked

S. M. 1093

up the throw-aways to announce the mass meeting, which was to be held under the auspices of the Cus-

tomers' Service Department, to which we intended to invite a man from the I.B.E.W., a gentleman from the C.I.O., and a gentleman to speak on the independent organization, and we laid out a plan of meeting where each speaker would be allowed 15 minutes and then there would be a question period and then there would be a period of sentiment among the speakers, and it was decided that Mr. John Schacht would act as chairman of the meeting, and I would act as secretary.

So nothing developed over the week-end, so that on
2855 Sunday afternoon we got together and picked up the throw-aways to distribute, and we met again at Teutonia Hall. So then came this next Monday, when we were called down supposedly to meet Mr. Muhlenberg.

Q. That was May 4th, do you say? A. No, May 3rd.

Q. May 3, 1937? A. Yes.

Q. Go on. A. We were called down to supposedly meet Mr. Muhlenberg, assistant general superintendent of the Customers' Service Department. So now, I am back to the point where we were in the room.

S. M. 1094

2856 Q. Now, you are up to the room. A. Yes. So we waited for Mr. Muhlenberg and he didn't show up, so Mr. Parker came in and Mr. Parker said, "Men, I have called you together this afternoon because I understand that a group of you men were ring-leaders in a meeting last Friday night, and met in a beer garden and you were drunk and disorderly and you defamed my name by saying that I sold you out, that as chairman of the employees representation plan, I sold you out."

So Mr. Nuttle, one of the service foremen, was there and asked Mr. Parker if we were on the spot with the management, and Mr. Parker says, "No, you are not on the spot. I only called you here to explain our stand

on going into the I.B.E.W.," and then he proceeded to tell about what had transpired in the general assembly meeting and how Mr. Stillwell had spoken to them and Col. Stillwell, who is the vice-president, had spoken to the men on the reasons why the company had recognized the I.B.E.W., that they thought it was the lesser of two evils, so we asked him if the question hadn't been brought up in general assembly by the representatives if we couldn't have our own independent organization, and the question was raised, and Mr. Stillwell answered it by saying that as much as he would like to see the 2858
members have their own independent organization, he felt that we couldn't make a go of it, and it was to the

S. M. 1095

best interests of the me to join the I.B.E.W.

So they went on to explain what had transpired at the meeting and so forth, and then we asked him various questions and then we brought up the question of whether, if we, as a group of employees of Consolidated Edison Company, went to Mrs. Herrick, of the——

Q. Before you get to that point, can you tell me whether or not Mr. Parker was an officer of the com- 2859
pany? A. Mr. Parker?

Q. Yes. A. He was chairman of the employee representation plan, he was an employee of the company. He was no officer.

Judge Ransom: He was president of the gas local, wasn't he?

The Witness: That's right.

Q. (By Mr. Moscovitz) And he could call you men into this meeting, even the men that had their day off? A. Yes, he could. Now, before I go any further, I am missing a point there. At that point that he told us

2860 officially the employees representation plan had gone out of existence midnight of April 30th, we had asked him why we were not informed of it. He said, well, the representatives were informed of it. He said, "Why wasn't a written notice sent around to all the employees and posted on the bulletin boards?" "Well," he says, "We have been very busy," he says, "We have not been

S. M. 1036

able to get that notice out, but it will be gotten out."

2861 As yet the notice has not appeared, so I mean, as far as I am concerned, it must be the employees representation plan that is in the company, because the management has not told me there isn't any yet.

Judge Ransom: I move to strike out the answer as purely speculative and incompetent. In fact, I move to strike out the entire testimony about Mr. Parker. It is not in any way binding upon the respondents what the chairman of the employees representation plan said. It is purely hearsay. It is not claimed that any representative of any of the respondents was present.

2862 Mr. Moscovitz: Mr. Examiner, I submit Mr. Parker is a very important person here, if he can call all these men in from their jobs to a meeting in the office of the company, and have this discussion with them about the vindication of his honor, as well as other things, I submit that the testimony is quite competent.

Trial Examiner Gates: The record may stand.

Judge Ransom: Exception.

A. So Mr. Parker then informed us that he was no longer an employee of the Consolidated Edison Company, that he had left the employ as of May 1, 1937, to

become a temporary international organizer for the I.B. E.W., and that he was no longer on the payroll, that he

S. M. 1097

had requested a leave of absence and that leave of absence was to extend until June 1, 1937, so that was quite a surprise to us, and then, because then he went on to say that the management had told him that he must vacate his former office as chairman of the employees representation plan by that night, must clean it out, and that he did not want to get into any lengthy discussion 2864 because he had all is business to clean out.

And then we went on and asked Mr. Parker if we went to Mrs. Herrick and requested her to hold an election among the employees of the Edison Company, do you think that she would grant such an election?

Judge Ransom: Objected to as wholly incompetent and not even interesting as to what the witness or Mr. Parker as president of the local union and the gas employees think about what Mrs. Herrick would or would not do.

Trial Examiner Gates: You may answer.

Judge Ransom: Exception. 2865

The Witness: Mr. Parker stated that he did not think that we would get any place with the National Labor Relations Board because the Consolidated Edison Company could buy or sell the National Labor Relations with what it all——

Judge Ransom: Now, just now I move to strike out the answer, if that sort of thing constitutes the efforts of the government to make a case I suppose I should not object to it.

S. M. 1098

Mr. Moscovitz: Well, I certainly think that

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if Mr. Parker is able to call all these employees together at will on the company's property and make discussion with them regarding organizational activities, he is speaking for the management, as far as I am concerned.

Trial Examiner Gates: The record may stand.

Judge Ransom: Exception.

The Witness: So then we continued with our discussion and we asked Mr. Kindelberg, who was there, and asked Mr. Parker, "Who sold us out?

2867 He or Ganley or who?" And Mr. Parker said, "If you want my frank opinion, the management sold you out," and then we questioned him and asked him who was going to pay us for our time and he told us that that was our fight with Mr. Vilas, our immediate supervisor, and with that, why, the meeting adjourned and we left.

Q. (By Mr. Moscovitz) Did you have any difficulty in securing a payment from Mr. Vilas? A. No, the payment came through, we had no discussion at all and the men that were off got paid time and a half for overtime.

Q. All right, can you tell me whether or not Mr.

2868 Parker did vacate his offices during the month that he was on leave of absence? A. I don't know officially

whether he did or not, but he told us that he was to vacate the office by May 3rd, that night, he had to get out of that office, I know that for a fact, but while, when we left the meeting, Mr. Fisher came in, he came in with a lot of money and he said that he had collected some $2,000. in I.B.E.W. collections, and Mr. Parker said that was fine work and he brought it into the office to count the money up there. I know that.

Q. Who is Mr. Fisher? A. Mr. Fisher was formerly representative from the Hunt's Point plant on the employees representation plan.

Q. What was his job with the company outside of that? A. I don't know what his job with the company was.

Q. You mean, he came into the council room with that money? A. That is right, he and Mr. Westoff.

Q. Who is Mr. Westoff? A. Mr. Westoff was the vice-chairman of the general council.

Q. From where? A. Well, he—— 2870

Q. Where was he employed? A. I don't know.

Q. Did you all leave at the time of the counting of the money? A. We were out in the hall when they came in, we were having a discussion in the hall. After this

meeting, of course, we went home because the meeting broke up at 4:30, and we were finished at 4:30.

But the next day, of course, we reported back to the meeting to our fellow employees, during the course of the day several of the men, the men who had the meeting with Mr. Parker, Mr. Schacht, Mr. Nuttle, they were 2871 called in by Mr. Vilas and Mr. Muhlenberg of the Customers' Service Department.

Q. What is Mr. Vilas's exact title? A. He is the superintendent of the appliance maintenance division of the Customers' Service department.

Q. He is top man? A. Yes, in the appliance maintenance department.

Q. Can he hire and fire? A. Well, I don't know.

Q. Can he fire? A. Probably he can recommend, I don't think he can——

Q. All right. A. So these men, I was not called in, Mr. John Schacht gave me the conversation that had

gone on there between he and Mr. Muhlenberg and Mr. Vilas, which was to be considered as off the record, unofficial, and that conversation was that the management had recognized the I.B.E.W., that the management wanted the I.B.E.W. and that Mr. John Schacht was to

S. M. 1101

be chairman of that mass meeting to be held on May 6th it would embarrass the management very much if we continued to hold that mass meeting and that he
2873 was advised to call the mass meeting off.

On the basis of having called in several of these men, three of them, to my knowedge went out and immediately signed up with the I.B.E.W.

Q. Who was that? A. That was Mr. Ross, Mr. Donnelly and Mr. Boadray.

Q. Well, did you have any discussion with Mr. Purdy, your foreman? A. Well, I had a discussion with Mr. Purdy, well, Mr. Purdy was in too.

Q. Well, while you— A. He was called in.

Q. While Mr. Schacht was there? A. Yes, but they were called in each as an individual, not collectively.

2874 Q. You were never called in? A. I was never called in.

Q. Did you have any conversation at all with Mr. Purdy? A. Well, I was out in the district and Mr. Purdy came back down and he is the foreman, he came back down and word was given again by dispatch that all the men would report to the district meeting place.

S. M. 1102

Q. When was that? A. That was on Tuesday, May 4th.

Q. Yes. A. So we all got back, because we knew there something important.

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Q. Is that the same group that appeared the day before? A. No, that's not the same group, that is the men that I work with in my district.

Q. Just your group of men? A. Just the group of employees.

Q. Yes. A. So Mr. Purdy said that he was going to say something to the men, he wished no questions asked when he was finished saying it, and when he was finished saying it, it was his opinion and nobody else's opinion but his, but he wanted to answer no questions.

So he got up on the table.

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Q. Where was that at? A. At 708 First Avenue.

Q. How many of you were there? A. About 30 of us, the whole district was there.

Q. That was during your working hours? A. That was during working hours, this was between four and four-thirty.

Q. Yes. A. And Mr. Purdy got up and stated that

S. M. 1103

the management had recognized the I.B.E.W., the management wanted the I.B.E.W. and the men better join the I.B.E.W. or take the consequences and he advised nobody to attend the mass meeting on Thursday, May 6, 1937.

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He said that was his personal opinion and he said that he would have nothing to do with answering any questions or anything.

Q. Did he emphasize the fact that it was his personal opinion? A. He emphasized that it was his personal opinion, and the next morning Mr. Purdy had delivered to him by Mr. J. A. Kennedy, who was working for the company on I.B.E.W. activities, I mean he was working on I.B.E.W. activities, and being paid by the company.

Q. How do you know that? A. Well, because he came

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over to our meeting place and he had no leave of absence, there is no record of any leave of absence because I took the trouble to check up on it through the cashier's department of our department to find out whether he had taken a leave of absence.

Q. When was that? A. That was during, that was right after I had been called down by Mr. Parker. I checked to find out if they had taken a leave of absence and I found that Mr. Parker had, but Mr. Kennedy, J. A. Kennedy, had not and he came over to our meet-

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S. M. 1104

ing place on May 5, 1937, and delivered to Mr. Purdy, our foreman, a receipt book and application cards for the I.B.E.W. Mr. Purdy then signed up Mr. Martin, who was the assistant foreman, and Mr. Hampson, who was the dispatcher, to the I.B.E.W.

He did not sign anybody else up, because they refused to sign.

Q. Was this during working hours? A. This was during working hours.

Q. Did you ever have any discussion with Mr. Vilas

2880 after that about the I.B.E.W.? A. No, I never had any discussion with Mr. Vilas. I might add that Mr. Vilas in no way has expressed an opinion on whether we should join the I.B.E.W., the C.I.O., or any labor organization. Mr. Vilas has been very fair in the whole thing, he is the only supervisor in our department that has been that fair.

Judge Ransom: I move to strike out the witness's argument, incompetent, unrelated to any issues here.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Now, can you tell me, do you

know what George Parker's regular pay is, yes or no? A. Yes.

Q. Well, how do you know? A. Because I checked up

S. M. 1104-a

on it through the cashier's department of the division.

Q. And what is his regular pay? A. $40.50.

Q. Do you know what his pay was the week preceding the day he left to start his leave of absence? A. Well, it ran in the neighborhood of about $101. and change. 2882

S. M. 1105

Q. And that included overtime? A. That's right.

Q. Was that overtime spent in activity for the I.B.E.W.?

Judge Ransom: That is incompetent, the witness can't know that.

The Witness: I assume——

Trial Examiner Gates: Just a moment please, when there is an objection being made don't answer. 2883

The Witness: I am sorry.

Trial Examiner Gates: What is the objection?

Judge Ransom: What is—the objection is that the witness merely speculates and guess about those matters, purely hearsay and not competent as a method of proving anything.

Mr. Moscovitz: I will withdraw the question.

Q. (By Mr. Moscovitz) Will you tell me whether or not during that week Mr. Parker was engaged as he had previously been engaged in the company? A. Well. he was, that week that he drew down that large sum of money, he was working on what was supposed to be

2884 employees representation plan business, overtime on that work.

Q. And was it during that week that he discussed, he made, he was engaged in these conversations about which you have testified? A. That is correct.

Q. Concerning the I.B.E.W.? A. That is correct.

S. M. 1106

Q. And he was not at all employed in regular company business, so-called? A. No.

2885 Q. I see. A. No.

He has not been employed in company business for the last two years, I mean strictly company business, I mean he is supposed to be a service man in the appliance maintenance division, but he has been the general council chairman for the last two years and therefore has worked on plan activities prior to him becoming general council chairman when he made in the neighborhood of $27.00 a week and when he became council chairman he was raised to $40.50.

Q. And that last week he got over a hundred dollars? A. That is correct.

2886 Q. And the payroll records of men like George Parker are at 408 East 111th Street, aren't? A. That is correct.

Q. So if the company wants to check on that particular record, that is where it is? A. That is correct.

Mr. Moscovitz: That's all.

CROSS EXAMINATION:

Q. (By Mr. Ransom) Mr. Gideon, you are engaged on the gas side of the business of the Consolidated

S. M. 1107

Edison Company? A. That is correct.

2887

Q. We have had witnesses chiefly in relation to electric matters so far; your work is in connection with the servicing of gas appliances? A. Well, right now in the past year I have been doing what is termed as new business work. I instruct plumbers how to keep up various appliances sold by the company, inspect them and see that they are connected properly.

Q. That is your work is done with local plumbers and on consumers premises? A. That is correct.

2888

Q. Now under the employees representation plan was there a separate organization up through the general council for the gas employees, I mean separate than that for the electric employees who had been in the New York Edison Company? A. That is correct.

Q. And Mr. Parker, prior to the disillusion or abandonment of the employees representation plan of collective bargaining had been chairman of the gas employees general council? A. That's correct.

Q. That was an organization wholly independent and separate from the organization of the electric employees which had been in the New York Edison and came into the Consolidated Edison by merger? A. That is correct.

2889

S. M. 1108

Q. Likewise after the recognition of the I.B.E.W., was there formed a local union of employees in the gas side of the work which was a separate and different union from that which nas been identified here in connection with the electric employees? A. You mean in the I.B.E.W.?

Q. Yes. A. Oh, yes.

Q. Do you happen to know the number of the local union which is of gas company employees? A. I think it is local B-70 or 830, 730 or 830, something like that, I have not taken much interest in it.

Q. Now, you have spoken about a number of men here. Is Mr. Kennedy a member of the I.B.E.W.? A. He is. He has been appointed by Mr. Parker as the I.B.E.W. representative for the appliance maintenance division.

Q. Well, I think you said that Mr. Parker has been the president of the gas employees local union No. 830, or whatever the number may be? A. No, I didn't say that. I said that Mr. Parker is a temporary international organizer. There are no officers to my knowledge in the gas local of the I.B.E.W.

Q. Has there been any election? A. Not that I know of.

S. M. 1109

Q. Do you know whether there have been any officers serving? A. Not to my knowledge.

Q. So your statement is that, as far as you know, Mr. Parker is only the temporary general organizer for this local union No. B-830? A. That is correct.

Q. Mr. Purdy is, I think you said, a member of the I.B.E.W.? A. That is correct.

Q. How about Mr. Mulenburg? A. Mr. Mulenburg, I think—Mr. Mulenburg is assistant general superintendent.

Q. I just wanted you to state. He is called assistant general superintendent of the customers' service department? A. That is correct.

Q. It is not your understanding that he is a member of a local union? A. I have no idea whether he is or not.

Q. You don't know? A. No.

Q. Mr. Vilus? A. I don't know.

Q. You don't know whether he is a member or not? A. No.

Q. You mentioned Mr. Charles Boadray, who worked on records in your office? A. That is correct.

S. M. 1110

Q. Is he a member? A. To my knowledge, he is.

Q. Mr. Herman Meyer? A. He is to my knowledge.

Q. Mr. Purdy is, you say, an assistant— A. Mr. Purdy is my immediate supervisor. He is a service foreman in the appliance maintenance division.

Q. And you referred to other service foremen? They are field foremen; aren't they? A. That is correct. 2894

Q. And were these other foremen and assistant foremen that you mention—are they members of the I.B.E.W.? A. Well, it all depends on whom you mean.

Q. I want to know, because I wasn't able to get all their names? A. The men that I mentioned that were assistants, Mr. Herman Meyer, a service foreman, is a member of the I.B.E.W. Mr. William Nuttle, a service foreman, is a member of the I.B.E.W. Mr. John L. Schacht, assistant foreman, is chairman of the independent gas and electric union.

Q. Mr. Hanson, this dispatcher, I think you said? A. He was formerly a member of the I.B.E.W. He is 2895 now a member of the independent gas and electric union.

Q. That is all.

S. M. 1111

(Witness excused.)

Trial Examiner Gates: We will recess until next Wednesday, June 23, 1937, at 10:00 o'clock A. M.

(Thereupon an adjournment was taken at 4:30 P. M. until June 23, 1937, until 10:00 o'clock A. M.)

ADJOURNMENT.

2896

Minutes of Hearing, Held June 23, 1937

S. M. 1112

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER

of

2897 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated companies, BROOKLYN EDISON COMPANY, INC., NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY,

Respondents,

and

2898 UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.

Case No. II-C 224

14 Vesey Street,
New York, N. Y.,
June 23, 1937.

The above-entitled matter came on for hearing pursuant to adjournment taken June 17, 1937, at 10:00 o'clock A. M.

Before:

ROBERT M. GATES, Trial Examiner.

2899

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National

S. M. 1113

Labor Relations Board.

WILL MASLOW, Esq., Attorney for the National Labor Relations Board.

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers, Local 1212.

2900

Messrs. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall St., New York City, N. Y. (by William L. Ransom, Jacob H. Goetz, and Pincus M. Berkson, of counsel), appearing specially for the respondent companies, reserving all objections to jurisdiction.

S. M. 1114

PROCEEDINGS

2901

Trial Examiner Gates: Proceed.
Mr. Moscovitz: Mr. Young.

JOHN YOUNG, called as a witness for the National Labor Relations Board, and being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. Young? A. 446—43rd St., Brooklyn.

2902

Q. By whom are you employed at the present time? A. New York & Queens Electric Light & Power Company.

Q. What kind of work do you do? A. Lineman.

Q. Are you a member at the present time of the U. E. R. W.? A. Yes, sir.

Q. How long have you been a member? A. Since the union swung from the I.B.E.W. over to the C.I.O.

Q. Were you before that, then, a member of the U.E.R.W.? A. Yes, sir.

2903

Q. Were you before that also a member of the E.R.P.? A. Yes, sir.

Q. Were you as a member of the E.R.P. a representative of the employees of the overhead bureau? A. That's right.

Q. When was that? A. Well, I was a representative for two terms.

S. M. 1115

Q. What terms? A. Whenever the company started the union.

2904

Mr. Ransom: I move to strike out the witness's statement as contrary to the evidence, as purely hearsay.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) When was that? A. 1934, I think they started it.

Q. Yes, were you representative then? A. Yes, sir.

Q. Were you representative after that? A. I was a representative until, for the first time in 1935, then for a year after that I wasn't any representative and then I was elected again.

Q. When were you last elected? A. I was elected in 1936, in June.

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Q. How long did you serve? A. I served up—

Q. Until you went into the I.B.E.W.? A. No, I served up to the time that the company recognized the I.B.E.W. As a matter of fact, I was never officially notified that I was no longer a representative.

Q. I see, just went out of existence? A. That is all.

S. M. 1116

Q. Were you a member of the joint council? A. No.

Q. Do you recall George O'Brien? A. Yes.

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Q. Who is he? A. He was an employee from our plant that was elected a representative in 1935, when the other representatives refused to accept the job, and he took it.

Q. Who were the other representatives? A. Well, I was elected myself in '35, too, and a fellow by the name of William Kennedy and a fellow by the name of Albert Martini.

Q. Was Albert Martini elected at that time? A. Yes.

Q. Do you recall the month? A. I think it was June. I am not sure about the month, but it was that time of the year, anyway.

2907

Judge Ransom: What year?

The Witness: 1935.

Q. (By Mr. Moscovitz) Did you take any steps after the June, 1935 election to sever the employee representation association from relationship with the company? A. Well, before the election in that year, we were successful in putting through for the membership to vote in an election if they wanted the company plan to stand or to go into an independent organization.

S. M. 1117

Q. Now, when was that? A. That was that same year, for election, around June.

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Q. June, 1935? A. That's right.

Q. And did you men contact the employees to find out if they wanted to continue in the plan? A. We discussed this at the meetings of all the representatives in the recreation room in Flushing.

Q. Did you have cards with you, pledge cards? A. No, not at that time.

Q. Not at that time? A. No.

Q. What did you discuss with the men? A. We discussed between ourselves—all the representatives got to-

2909 gether and we discussed that we would give the representatives an opportunity to vote if they wanted to continue the company plan or if they wanted to join an independent organization. That was put on the ballot for them to vote on.

Q. You say that was June, 1935? A. That's right.

Q. Was there a ballot taken on that question? A. Yes.

Q. At that time? A. Yes.

S. M. 1118

Q. Was there a vote? A. There was.

2910 Q. And was the vote just in your company? A. Yes, in our company.

Q. Do you recall what the result of the vote was? A. Well, I couldn't say exactly what the result was, but I know that we were not successful in winning a victory.

Q. Yes, and then what took place, do you recall? A. The men of the overhead bureau that elected me as a representative didn't want to have anything to do with the plan and then I refused to take any part in it, and this fellow O'Brien that you mention, I think he got four or five votes and he came to the front and he accepted and he appointed another man.

Q. Who did he appoint? A. A fellow by the name of Rudolph Reese.

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Q. Yes, to sit on the council? A. Yes.

Q. Did you after that step out of the picture completely? A. I did not have anything to do with the collective bargaining at all.

Q. You had nothing to do with the plan? A. No.

Q. Did you have after that any pledge cards that you

S. M. 1119

took around to the men? A. That was this year.

Q. When in this year? A. Around the end of March or the first of April. 2912

Q. 1937? A. That's right.

Q. What kind of pledge cards were they? A. As I recall, it was a white card and for the employees to signify their intentions for carrying on the company plan.

Q. Who gave you these cards? A. We got them at the Gas and Electric Building on Roosevelt Avenue, we were called in to a special meeting one morning, all the representatives of the overhead bureau.

Q. Called in by whom? A. By R. A. Burns, he was chairman of the distribution department.

Q. The committee? A. Yes, representing the employees. 2913

Q. Yes, and he produced— A. And he produced the cards after we went there and he told us that those cards came from the management and those cards are to be taken around to the representatives, to contact everybody connected with the plan, and after we have all the contacts made, return them again and we asked him if the cards were to go back to the management again and he said, "Undoubtedly they would."

S. M. 1120

Q. What do you mean when you say "contacts

made"? A. Well, in our bureau the gangs are scattered throughout the territory, and in order that we may contact every one we have got to go from one location to another to contact the men and ask them how they felt about signing those pledge cards or not.

Q. How many of you were doing that? A. Two, because the third man that was on with us as a representative was this O'Brien that was mentioned before and he had been transferred to the inventory department from the time previous.

Q. I see, and who was the other man? A. Albert Martini.

Q. And did Martini take cards out, too? A. Well, we always, when we went around to see the men, we have a big territory to cover and in order that we may cover the territory in the time that was allotted to us, we decided that we would go out singly whenever we had anything to tell the men, but this time I felt that this was a very important thing and I did not wish to go around alone because I did not know what the results would be, so I decided that we would come out and go together and before we did that, we found out if it was all right to take as much time as we wanted to to do it.

S. M. 1121

Q. Who did you phone? A. What?

Q. Who did you phone to find out? A. We asked Burns if it was all right and he said "yes," and after that we asked Patrick Cary, he was chairman of the general council, if it was all right and he said "yes, take all the time you want to do the job."

Q. What did your boss say about it? A. Well, he didn't have anything to say about it.

Q. What was his name? A. What do you mean, my immediate boss?

Q. Yes. A. The foreman in the gang?

Q. Yes. A. I was working for a fellow by the name of George Gardner, at that time.

Q. Didn't he have anything to say about it? A. No.

Q. You could go and come as you pleased on this kind of work. A. That's right.

Q. You always have? A. Yes.

Q. Now, how much time did you spend doing that? A. It took us more than three days to do that job.

Q. How many of the men did you contact? A. We contacted between 160 and 170. 2918

S. M. 1122

Q. Each of you? A. The two of us together.

Q. The two of you? A. Yes.

Q. And you got your regular pay, did you? A. Yes, sir.

Q. What did you do with the cards after you had circulated all of the men? A. Well, there was a lot of controversy about the cards in our bureau because out of the 160 some odd men that we contacted in the bureau, only 23 signed the cards, and when we turned them into the general council, they thought it was terrible that we 2919 would be out more than three days contacting the employees and bringing in only 23 signatures.

So Patrick Cary expressed his sentiments that he felt that we did not do a good job, and if he had somebody else on the job, as a matter of fact, he said if O'Brien was on the job he would bring in all them cards signed. So I asked him if he felt that way about it to come before the men any morning or evening that he wanted to, as long as he made arrangements with the management to get 10 or 15 minutes and talk to the men and ask them by a show of hands if they wanted to sign the cards.

2920 I thought that would be the quickest way to do it, and he did not do that and in the course of a few days

S. M. 1123

after that I was called up by phone and I was told that Pat Cary and Martini were cooking up a plot to take the cards around again to the men and leave me out of it.

Q. Who called you?

2921 Judge Ransom: I move to strike out the answer as wholly hearsay, unidentified, not within the issues.

Trial Examiner Gates: It may stand, if the witness states the basis of his information.

Q. (By Mr. Moscovitz) Who called you up? A. John Sutton from Jamaica.

Q. What was his job? A. He was a chairman of the bureau council.

Q. Was that George Sutton? A. Yes, George Sutton, excuse me.

Q. And before this, when you and Martini were circulating the cards, did you ask each individual man if

2922 he wanted to continue the plan? A. Well—

Q. How did you do it? A. I held the cards and Martini did the speaking. We went to the foreman whenever we came to a gang and we asked the foreman if we could have the gang ten or fifteen minutes to explain the case to them, and in all cases they said it was perfectly all right, and we would get them around the truck and explain it to them. He would tell them what

S. M. 1124

was what, and after he had finished, I would hand out a card to each man and tell them to do what they wanted to do, sign it or not, whatever they felt best.

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Q. You were not a very enthusiastic distributor of cards, were you? A. Well, I was told not to say anything either way, so I didn't want to say anything either way, because somebody would probably point a finger at me afterwards, that I said something out of the way, and I didn't want to do that.

Q. And then you got the number of cards that you have already indicated signed? A. Yes.

Q. And you were testifying just before about a statement made to you by the general council representative—

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Judge Ransom: Bureau council, I think.

A. Bureau council representative, bureau council chairman.

Judge Ransom: Overhead bureau, wasn't it?

The Witness: Overhead bureau, that's right.

Q. (By Mr. Moscovitz) The overhead bureau? A. Yes.

Q. Go on. A. He told me he was called to a special meeting to the Gas and Electric Building and Patrick Cary was there, chairman of the general council, and Albert Martini. I was not asked to be there.

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S. M. 1125

Q. When was this? A. Some time in April.

Q. 1937? A. Yes.

Q. Go on. A. And Pat Carey and Martini left the general council office and went to another office across the hall, because they didn't want Sutton possibly to know what they were talking about.

Judge Ransom: I move to strike the answer out as wholly hearsay, in no way binding on the respondents, not within any issues here.

Trial Examiner Gates: The reporter will please read the answer.

(Answer read.)

Trial Examiner Gates: Motion to strike is granted, beginning with the word "because."

Judge Ransom: I move to strike the entire answer because this witness was not there, purely hearsay, quite outside the issues here as to the respondent New York & Queens Electric Company. The complaint and charge tender no issue as to the employees representation method of electing representatives.

Trial Examiner Gates: It may stand if the witness states the basis of his knowledge.

S. M. 1126

Judge Ransom: Exception.

A. After they had talked for about an hour and a half in this other office, they came back in and decided that they would ask Sutton to take the cards around to the men again in the Elmhurst district in the overhead bureau—

Judge Ransom: I now move to strike both answers on the same grounds previously mentioned.

Trial Examiner Gates: Ruling may stand. The answer may stand if the witness can state the basis of his knowledge.

Q. (By Mr. Moscovitz) Do you know how—how do you know this? A. Because I was told to be careful because they were cooking up a plot to get me.

Q. Who was cooking up a plot? A. Martini and

2929

Cary, because I didn't get enough cards signed up in the Elmhurst district, that just because I happened to be connected with an independent organization, my sentiments wouldn't be with the cards.

Judge Ransom: I now move to strike the two answers to which my motion related and the subsequent answer, on the ground that it now clearly and affirmatively appears that the testimony was purely hearsay, remote, in no way binding upon the respondents, nor within the issues.

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Trial Examiner Gates: Motion to strike is

S. M, 1127

denied. It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) At that time, what independent organization were you a member of? A. I was a member of the C.I.O.

Q. And did they go out and circulate the cards or speak with the men again? A. Well, they decided—see, we got two days every month for to contact the men.

Q. Who gave you those two days? A. The management told us we were entitled to two days to contact the men.

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Q. How long had you been receiving those two days? A. When I was a representative.

Q. Since you were a representative? A. Yes, we got three days altogether. We got one for attending a meeting and two days to contact the men on the field.

Q. That was also given to the other representatives? A. Yes, in the overhead bureau that I know of.

Q. How about the other bureaus? A. I don't know about the other men.

Q. In the overhead bureau, though, you got that? A. Yes, sir.

2932 Q. That was time for which you were paid by the

S. M. 1128

company? A. Yes.

Q. All right. A. So Monday was supposed to be our contact day. Instead of we going out and contacting the men, we decided to go to the general council office in the Gas & Electric Building in Roosevelt Avenue and decide what would be done about the cards and we went over there and Sutton called up Pat Cary, chairman of
2933 the general council, and he came there and he told me that I done a very bad job of it and that he didn't know how he was going to go back to the management and show them only 23 cards signed, when there should be 160 and 170 signed, so—

Q. Was that the number of men that were employed? A. In that bureau, yes.

Q. Yes. A. And that section, that is only a section of a bureau.

Q. What section is it? A. That is the Elmhurst section.

Q. Yes. A. And he said, "What objection have they
2934 to signing the cards if you did not influence them in any way?" I said, "A lot of fellows think that just because there is a label stamp on the cards, the first time the company ever handed out any literature with a labor stamp on it and a lot of them were figuring that the

S. M. 1129

company was intending bringing the I.B.E.W. to fight the C.I.O." That was one of the objections, I told him. Well, he said, "I don't know anything about any outside organization, but if I had my choice I think I would pick the C.I.O.," and he said, "You have got to take the cards out again and contact the men, but I will leave you out of it this time."

I told him I was the only elected representative from the Elmhurst district and I felt that I should be there, even if I did not have anything to say.

Q. Who told you that? A. Pat Cary.

Q. Yes. A. So we did not agree on taking the cards out and they were never taken out again, anyway.

Q. Yes, in what bureau was Cary employed? A. I don't know what bureau, he came from, but he was chairman of the general council.

Q. Yes, is he still employed in the company? A. So far as I know, he may be released for the setting up of 2936
this new union at this time, I could not say that, but the I.B.E.W., he is very actively connected with it.

Q. You mean actively connected now with the I.B.E.W.? A. That's right.

Q. Since when do you know that fact? A. That he is connected with it?

S. M. 1130

Q. Yes. A. Ever since the company recognizes the I.B.E.W., he has identified himself with it as being their leading man in Queens.

Q. Yes, did you see Martini at all after that regarding the cards? A. Yes, regarding the pledge cards. 2937

Q. Yes. A. Well, he was the day there we had the discussion.

Q. Did you see Martini and any of the superintendents at any time after that? A. Oh, yes, whenever the company recognized the I.B.E.W. they called a special meeting in the Gas & Electric Building, the day following, and I was not asked there, but Martini was and he came back to Elmhurst plant and I met him there at noon hour and he told me he had been at a meeting that morning and I wondered why I was not asked there. He told me a lot of things were developing, he said, "I guess you

2938 see in the newspapers yesterday where the company recognized the I.B.E.W.?"

I said, "I did," and I says, "Does the company union still exist?" And he said, "Yes."

I said, "For how long?" And he said, "I don't know," and I says, "If it still exists I am still a representative," and I had every right to be at that meeting

S. M. 1131

2939 to represent those people that elected me here.

He says, "Well, I can't answer that, I was only notified to be there myself," but he said, "I have not any time to talk to you now because I am going to the superintendent's office in Flushing." So he left me immediately and after a couple of hours he returned and he set himself up inside in the superintendent's office in Elmhurst, the district superintendent's office.

Q. You saw that? A. Yes.

Q. What was the district superintendent's name. A. James Connelly.

Q. Yes. A. And he called the men in, each gang at the time, a gang consists of anywhere from 68 men, he
2940 asked them to sign those I.B.E.W.

Q. Cards? A. Yes.

Q. Application cards? A. Application cards.

Q. Yes. This was how many—go ahead. A. I happened to be in the second gang that was called in there and I asked him what he was doing that for, and he said, "If you were told to go out and do any job while you were in working hours you would do it, too, I was asked

S. M. 1132

to do this, this is my regular day's work and that is why I am doing it.

Judge Ransom: I move to strike out the answer as not in any way within the issues or binding upon any of the respondents.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

The Witness: And I asked him what he knew about this union for the employees and he told me he didn't know anything about it.

Q. (By Mr. Moscovitz) That is the I.B.E.W.? A. Yes, I told him that he was very foolish as a representative to be trying to get the employees to sign application 2942
blanks for a union to bind them to something that he did not know anything about, I asked him if he ever saw the constitution of it, if he knew what a Class B charter was, and he didn't know anything about it, he was just told do a job and he was doing it.

I said, "That's the reason I wasn't asked to the meeting this morning because they thought that they might have some opposition there."

Q. Well, was the assistant superintendent there? A. Yes.

Judge Ransom: Martini?

The Witness: No. 2943

S. M. 1133

Q. (By Mr. Moscovitz) I say, was the assistant superintendent there at the time Martini was in the superintendent's office. A. That's right.

Q. What is his name? A. Richard Wessell.

Q. And the superintendent was there? A. Yes.

Q. Was there any other assistant superintendent there? A. There were general foremen there.

Q. How many? A. There were three.

Q. Do you remember the names? A. One of them was Clarence Fogel, John Sheridan and Tom Green.

2944

Q. And they were there during the period of time that Martini was engaged in the activity which you have just described? A. That's right.

Q. When you say the superintendent and the assistant superintendent and the three general foremen were there, do you mean that they were standing around in the room or Martini was there speaking with these crews? A. Well, there happened to be about three desks in the room and Martini had one of them and they were about their regular business of the other two.

2945

S. M. 1134

Q. And right in the immediate— A. Room.

Q. Room? A. Office.

Q. And immediately next to Martini? A. That's right.

Q. And in his presence? A. Right.

Q. That is the head office in that plant, isn't it? A. That's right.

Q. How many days was this after Martini had been hanging out the E.R.P. cards? A. The week before he was handing out the E.R.P. cards.

2946

Mr. Moscovitz: That is all.

CROSS EXAMINATION:

Q. (By Mr. Ransom) You are a lineman in the Flushing Elmhurst division? A. Elmhurst district, yes.

Q. How long have you been employed in the company? A. Almost 12 years.

Q. And what was the first labor organization with which you became identified? A. The Brotherhood of Utility Employees.

Q. When was that? A. About the Spring of 1935.

S. M. 1135

Q. That is the so-called Independent Brotherhood of which Mr. Emler and Mr. Wagner and Mr. Kennedy have testified? A. That's right.

Q. And you were quite active in that organization, while it was in existence were you not? A. I was a member. Every member is supposed to be active. That is all.

Q. Well, you were active, were you not, with Mr. Wersing and Mr. Kennedy? A. Well, they were officers of the union and I was just a member. 2948

Q. Did you serve on any committees with them, concerning which they have testified? A. Not on any committee that I can recall. We didn't have very many committees except that sometimes we made—on one occasion we made contact with the management when the officers of the union were laid off.

Q. Well, you were on the committee for the Brotherhood of Utility Employees which went to the management, weren't you? A. That's right, sir.

Q. And that was with respect to the laying-off of what employees that you went to the management for? A. Martin Wersing, Michael Wagner and Jake Grulich. 2949

Q. Were you here to hear the testimony that was

S. M. 1136

given about that? A. No, sir.

Q. You were not? A. No, sir.

Q. Now, you were active in the Independent Brotherhood of Utility Employees until that local went into the I.B.E.W., weren't you? A. That's right, sir.

Q. And when was it that the Independent Brotherhood went into the I.B.E.W., as you recall it? A. As I recall it, it must be in the Spring of 1936.

Q. Were you elected on your overhead bureau council as a representative of the Elmhurst district in 1934? A. I was.

Q. So you served as a member of your overhead bureau council under the E.R.P. from May or June of 1934 up to the same time in 1935? A. That's right.

Q. And you were nominated and elected by the employees in that district? A. That's right.

Q. Then in the month of May or June, 1935, you were again nominated and elected by the employees? A.
2951 (No response.)

Q. To the same position? A. (No response.)

S. M. 1137

Q. That is right; isn't it? A. (No response.)

Q. Don't shake your head, just answer. A. That's right.

Q. And after you had been elected, you declined to serve that year? A. That's right, because the majority of the men that I was representing didn't want to do anything about that, didn't want to have anything to do with it.

2952 Q. So that the year 1935-'36 you did not serve on your bureau council? A. No, sir.

Q. Your bureau council which at that time was made up of representatives of the Elmhurst district and the Jamaica district and was then the Flushing district? A. What year was that, sir?

Q. '34 or '35? A. Yes, we had the Flushing district in 1934.

Q. And then the Flushing district was later merged into the Elmhurst district? A. That's right.

Q. This Mr. Sutton, George Sutton, whom you have spoken of as chairman of the bureau council, was from the Jamaica district, wasn't he? A. That's right.

CLERK'S COPY.

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 19

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ITS AFFILIATED COMPANIES, ET AL., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD ET AL.

No. 25

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, ET AL., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED { APRIL 2, 1938. APRIL 11, 1938.

CERTIORARI GRANTED MAY 16, 1938.

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Note: The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the *Stenographic Minutes*, as well as the numbering of the *printed* pages. The pages of the Stenographic Minutes are referred to as S. M.; the pages of the printed record as R.

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Note: The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the *Stenographic Minutes*, as well as the numbering of the *printed* pages. The pages of the Stenographic Minutes are referred to as S. M.; the pages of the printed record as R.

BOARD'S EXHIBITS

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
1	Charge filed with the Board by United Electrical and Radio Workers affiliated with the Committee for Industrial Organization, dated May 5, 1937			4	135	4
	Complaint issued by the Board, by its Regional Director for the Second Region, dated May 12, 1937 (with the various subsequent amendments shown)			4	135	7
	Acknowledgments and proofs of service of the complaint and notice of hearing			4	135	17
	Amended notice of hearing, dated May 25, 1937, issued by the Board			4	135	34
	Affidavit of service of amended notice of hearing			4	135	35
2	Stipulation of facts for the determination of the question of jurisdiction			23	151	1318
3	Pamphlet issued by the Consolidated Edison Company of New York, Inc., in August, 1936, entitled "Serving New York, electricity, gas, steam" (not printed; may be referred to in the Transcript of Record filed)			24	152	
4	Copy of an Order of the Board, dated June 2, 1937, denying the petition and motion of the respondent Companies for a prior and separate hearing as to jurisdiction and for dismissal of the complaint for want of jurisdiction			41	166	38
5	Notice of motion by the Board, served on respondent Companies on June 9, 1937, to amend its complaint by adding the name of Stephen L. Solosy as one of the persons named in Paragraph 19 of the original complaint as having been discharged by respondent Companies			41	166	40
6	One side of an application or pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed)	177	270	179	271	

Note: By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.

Board's Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
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7	The other half of a pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed)	178	270	179	271	
8	Copy of the Constitution and By-laws of the United Electrical and Radio Workers of America (not printed; may be referred to in the Transcript of Record filed)			373	413	
9	Constitution of the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor (not printed; may be referred to in the Transcript of Record filed)	382	420	1500	1252	
10	Letter dated November 1, 1934, from Mr. Wersing to Mr. Kennedy			714	670	1390
11	Copy of the Employees' Representation Plan of The New York Edison Company, Inc. (not printed; may be referred to in the Transcript of Record filed)			879	787	
12	Reply dated January 4, 1937, of Mr. Edward P. Prezzano to Mr. Straub's letter (Respondents' Exhibit No. 15)			945, 1500	839, 1252	1391
13	(Produced at the request of the Board) Letter from Mr. D. W. Tracy, President of the International Brotherhood of Electrical Workers, to Mr. Floyd L. Carlisle, dated April 16, 1937			987, 1500	871, 1252	1392
13 (a)	(Produced at the request of the Board) Reply by Mr. Carlisle to Mr. Tracy, dated April 20, 1937			987, 1500	871, 1252	1393
14	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and International Brotherhood of Electrical Workers through its Local Union B829, dated June 15, 1937	987	871	1448	1213	1394
15	Letter from Mr. D. W. Tracy to Mr. Ganley, dated April 21, 1937			1027	903	1406
16	Notice by employees of Westchester Lighting Company that the International Brotherhood of Electrical Workers Local B832 had become the bargaining agent for its members among the employees of Westchester Lighting Company (not printed; may be referred to in the Transcript of Record					

Board's Exhibits (Continued)

Exhibit No.		Marked for Identification S. M. Page	Marked for Identification Printed Page	In evidence S. M. Page	In evidence Printed Page	Printed at Page
17	(Produced at the request of the Board) Photostat copy of the employment record of Eleanor Misbach for the months of April and May, 1937 (not printed; may be referred to in the Transcript of Record filed)	1229	1050	1230	1051	
18 (a), (b), (c)	(Produced at the request of the Board) Photostat copies of employment record of Eleanor Misbach for October and December, 1936, and February, 1937 (not printed; may be referred to in the Transcript of Record filed)			1236	1055	
19 (1)	(Produced at the request of the Board) Foreman's daily report and attached work order of May 12, 1937, as to A. Martini (not printed; may be referred to in the Transcript of Record filed)			1249	1065	
19 (2)	(Produced at the request of the Board) List of the Delegates and Officers of the Employees' Representation Plan, with their employment records, showing any overtime (not printed; may be referred to in the Transcript of Record filed)			1412	1184	
20	(Produced at the request of the Board) Summary of charges and accounts covering "general welfare—collective bargaining" and "employees' representation plan" accounts—1934-1937 (not printed; may be referred to in the Transcript of Record filed)			1433	1202	

EXHIBITS OF RESPONDENT COMPANIES (PETITIONERS HEREIN)

1	Certified copy of judgment roll filed June 2, 1937, in *Consolidated Edison Company of New York, Inc., et al.*, v. *Lamar Hardy, et al.*, District Court of the United States for the Southern District of New York, Index No. *Eq. 81-377* (not printed; may be referred to in the Transcript of Record filed)			34	160	

Note: By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.

Respondents' Exhibits (Continued)

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	Special Appearance and Motion to Dismiss			34	160	
	Order of January 17, 1936, with Notice of Settlement vacating service of the subpoena in equity upon certain defendants			34	160	
	Stipulation and Order *pro confesso*, dated January 29, 1936			34	160	
	Order *pro confesso*, dated March 10, 1936			34	160	
	Order of April 14, 1936, by Honorable Henry W. Goddard, United States District Court, substituting the name of Consolidated Edison Company of New York, Inc., in place and stead of the name "Consolidated Gas Company of New York" (with affidavit on which Order was granted)			34	160	
	Decree *pro confesso*, dated October 23, 1936			34	160	
	(The above documents from the judgment-roll are not printed herein, but may be referred to in the Transcript of Record filed.)					
2	Certified copy of the Opinion of Caffey, *U.S.D.J.*, in entering the above judgment			34	160	1408
3	Notice of motion by respondent Companies, with affidavit, dated May 17, 1937, for prior and separate hearing as to jurisdiction and to dismiss complaint and charge for want of jurisdiction (Part of Board's Exhibit No. 1)					19
4	(Produced at the request of the Board) Employee rating card of Mr. William J. Kennedy (not printed; may be referred to in the Transcript of Record filed)	714	670	1523	1269	
5	(Produced at the request of the Board) Letter of Mr. John F. Emler to Mr. Frank W. Smith, dated November 20, 1936 (not printed; may be referred to in the Transcript of Record filed)			756	701	

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
6	(Produced at the request of the Board) Employee rating card of John F. Emler (not printed; may be referred to in the Transcript of Record filed)	756	701	1523	1269	
7	Verified answer on behalf of the respondent Companies to the complaint of the Board as amended as to June 14, 1937....	901	804	1501	1253	42
8	Copy of Employees' Representation Plan adopted by employees of The Bronx Gas and Electric Company (not printed; may be referred to in the Transcript of Record filed)	912	812	931	827	
9 (1)	Letter, dated July 15, 1936, from Harry J. Straub, Chairman, Third General Council of the Employees' Representation Plan of The Bronx Gas and Electric Company, to Mr. E. P. Prezzano (not printed; may be referred to in the Transcript of Record filed)			926	823	
9 (2)	Mimeographed circular requesting a vote by employees of The Bronx Gas and Electric Company on a plan of electing representatives for collective bargaining (not printed; may be referred to in the Transcript of Record filed)	920	826	930	826	
10	Printed communication to the employees of The Bronx Gas and Electric Company, dated April 11, 1934, accompanying copy of the Plan (Exhibit No. 8) (not printed; may be referred to in the Transcript of Record filed)			931	827	
11	Printed letter on the letter-head of The Bronx Gas and Electric Company, dated April 11, 1934 (not printed; may be referred to in the Transcript of Record filed)	931	828	1500	1252	
12	Form of ballot used by employees in electing tellers to conduct their vote on April 17, 1934 (not printed; may be referred to in the Transcript of Record filed)			932	828	
13	Form of ballot containing propositions voted on by the employees in the election of April 17, 1934 (not printed; may be referred to in the Transcript of Record filed)			932	829	

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
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14	Enrollment blank for enrollment of employees to vote and take part in the nomination and election of representatives under the Employees' Representation Plan (not printed; may be referred to in the Transcript of Record filed)	934	830			
15	Letter of Mr. Harry J. Straub to Mr. Edward P. Prezzano, President of the Westchester Lighting Company and The Bronx Gas and Electric Company			935	831	1416
16	Membership of employees in the Local Unions of the International Brotherhood of Electrical Workers having collective bargaining contracts with Companies of the Consolidated Edison Company group of Companies			1448	1212	1418
17	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B830 (gas employees), dated June 15, 1937	1470	1229	1471	1230	1419
18	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B829 (electric employees), dated June 15, 1937 (printed as Board's Exhibit No. 14)	1470	1229	1471	1230	1394
19*	(Produced at the request of the Board) Memorandum of Agreement between Brooklyn Edison Company, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B825, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed)	1470	1229	1471	1230	
20*	(Produced at the request of the Board) Memorandum of Agreement between New York and Queens Electric Light and Power Company and the International Brotherhood of Electrical Workers, and					

* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
	its Local Union No. B839, dated June 1, 1937 (not printed; may be referred to in the Transcript of Record filed)	1470	1229	1471	1230	
21*	(Produced at the request of the Board) Memorandum of Agreement between Westchester Lighting Company and The Yonkers Electric Light and Power Company and the International Brotherhood of Electrical Workers, and its Local Union No. B832, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed)	1471	1229	1471	1230	
22*	(Produced at the request of the Board) Memorandum of Agreement between New York Steam Corporation and the International Brotherhood of Electrical Workers, and its Local Union No. B826, dated June 16, 1937 (not printed; may be referred to in the Transcript of Record filed)	1471	1229	1471	1230	
23	(Produced at the request of the Board) Memorandum of Agreement between the International Electrical Workers Union and its Local Union No. 3 (Inside Workers), and The New York Edison Company, dated January 29, 1924 (not printed; may be referred to in the Transcript of Record filed)			1495	1248	
24	Pamphlet entitled "A Call for Special Vote by All Employees of The New York Edison Company and The United Electric Light and Power Company," to be held on November 22, 1933, with copy of Plan for Collective Bargaining Through Employee Representation			1502	1254	1431
25	Letter dated June 28, 1937, to the National Labor Relations Board, from counsel for the respondent Companies			1577	1309	1463
25(a)	Reply by the National Labor Relations Board, dated July 2, 1937, to the letter of June 28, 1937, from counsel for the respondent Companies			1577	1309	1467

* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.

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S. M. 1138

Q. In the overhead bureau? A. In the overhead bureau.

Q. And the overhead bureau was one of the several bureaus which made up the distribution department? A. That's right.

Q. Your membership in the council of the overhead bureau,—did that make you a member of the department council? A. No, only the chairman of the bureau council could sit in meetings of the department council.

2954

Q. So that Mr. Sutton, as chairman of your bureau council, represented your bureau in the department council? A. That's right.

Q. And you said that Mr. Harry Burns was chairman of the distribution department council? A. That's right.

Q. And he, in turn, would sit in the general council of the company? A. That's right.

Q. For the New York & Queens Electric Light & Power Company employees? A. Yes.

Q. Now, Mr. George O'Brien, concerning whom you have testified,—he was a lineman in your Elmhurst bureau? A. He was a chauffeur, a truck chauffeur.

2955

Q. But he was employed in your Elmhurst bureau?

S. M. 1139

A. That's right.

Q. And what was Mr. Martini's job with the company? A. He is a third class lineman, I believe.

Q. In Elmhurst? A. Overhead bureau.

Q. In the Elmhurst district? A. Yes.

Q. Overhead bureau? A. That's right.

Q. Now, you spoke about the efforts which you and others made in 1935, at the time of the May or June

elections, to have a vote of the employees on the continuance of the representation plan. Is that right? A. That's right.

Q. And that vote was held, as you have testified— A. That's right.

Q. Also at that election you were again nominated by the employees in your bureau and elected to the bureau council? A. That is the year I did not serve.

Q. Well, I am speaking—yes, in '35 you were elected and did not serve? A. That's right.

2957 Q. Then in 1936 you were again nominated by the employees in your district and elected? A. That's right.

S. M. 1140

Q. The voting was by the employees of your district and not of the whole bureau? A. Just of the district.

Q. Yes, and in 1937 you said, in the Spring of 1937, these cards were circulated which asked employees to sign if they wanted to continue the E.R.P. system of electing representatives? A. That's right.

Q. Now, when you were nominated and elected as a member of your bureau council in 1934, were you or

2958 were you not a member of the Brotherhood? A. No, sir.

Q. When you were nominated and elected in 1935, were you or were you not a member of the Brotherhood? A. I was a member then.

Q. When you were nominated and elected in 1936, in June, that was after the Brotherhood had been reorganized into the local of the I.B.E.W.? A. That's right.

Q. And it was likewise after you had been a member of this committee which had dealt with the management with respect to the lay-off of certain employees. A. That's right.

Q. Now, this circulation of cards by means of which

2959

S. M. 1140-a

employees were to say whether they wanted the E.R.P. continued or not, in the Spring of 1937, your circulation of those was only in your district? A. Our district, that's all.

S. M. 1141

Q. And related only to the employees of your bureau in that district? A. The overhead bureau, yes.

2960

Q. And in the Jamaica district, am I right in assuming, that the circulation of the cards there was looked after by Mr. Sutton? A. Sutton and Turner.

Q. Who were the elected representatives of the employees in the E.R.P., in that district? A. That's right.

Q. And this work of taking around these cards, to which you have testified was done as a part of your regular work for the E.R.P.? A. That's right.

Q. You have testified, I think, that the management allowed an employee who was a member of a bureau or department council one day a month without reduction of pay to attend council meetings? A. That's right.

2961

Q. And two days a month for contacting the employees and seeing what the employees wanted their representative to take up with the management? A. That's right.

Q. And that again was without any deduction or loss of pay? A. That's right.

S. M. 1142

Q. At least so far as your bureau is concerned, that is what you got? A. That's right, in the overhead bureau that is what I got.

Q. And so far as you know, is that what the other men who were on the bureau council got? A. Well, they

had some understanding with the management for their respective bureaus.

Q. But as far as your bureau is concerned, that is what was done in your bureau? A. That's right.

Q. And so far as where you went, or whom you talked to on those days, you were not being made accountable, you were not accountable to your foreman or anybody else? A. No, sir.

Q. You testified concerning a special meeting that was held the day after the recognition of the I.B.E.W. as a
2963 collective bargaining agency for the company. You said you did not attend that meeting and were not invited. As you understand it, or understood it at the time, of what was that a special meeting? A. At what time?

Q. What was it a special meeting of? A. As I understand it, they were getting their forces together for to replace—

Q. Well, you spoke of it as a special meeting held on

the day after the recognition of the I.B.E.W. by the company. Was that, as you understood it, a special
2964 meeting of representatives? A. That's right.

Q. Was it a special meeting of persons who were interested in the I.B.E.W.? A. Everybody that attended it was a former representative or a representative up to that time.

Q. As you understood it, it was a meeting called by the department council chairman? A. Our general council chairman or the department council chairman?

Q. General council chairman? A. Either one.

Q. You don't know? A. I don't know.

Q. But it was called either by the department chairman or general council chairman? A. It was called by the representatives, that's all I know.

2965

Q. Then it was that afternoon, was it, that this handing out of I.B.E.W. cards to employees by Martini took place? A. That's right.

Q. And was that in an assistant superintendent's office of some district? A. Well, the superintendent of

S. M. 1144

that district, he was classified as a superintendent, as far as I know.

Q. What district are you speaking about? A. Elmhurst District.

2966

Q. Elmhurst District? A. Yes. the district he came from.

Q. And his name you gave as Mr. Connelly? A. That's right.

Q. And the assistant superintendent there is Mr. Conway, is it? A. Mr. Wessel.

Q. Mr. Wessel? A. Yes.

Q. And was this a rainy day, do you remember? A. Yes, that's why we were in the plant.

Q. It was raining outside and you were called inside? A. Yes, we usually come around the plant in a rainy day if there isn't any emergency work to be done outside.

2967

Q. And you said that the superintendent and the assistant superintendent were there at their desk at their regular work? A. That's right.

Q. And there was a third desk in the room that Mr. Martini was using? A. That's right.

Q. And now who were these three men, who were these three general foremen, that you spoke of as being

S. M. 1145

in the group, what were their names? A. John Sheridan, Tom Green, Clarence Fogel.

2968

Q. Sheridan, Green and Fogel? A. That's right.

Q. Now, do you know whether they are members of the I.B.E.W.? A. I don't know, sir.

Q. Do you know whether the assistant superintendent is a member? A. I couldn't tell you, I don't know.

Q. You don't know if Mr. Connelly is, do you? A. I don't know.

Q. You know that Mr. Martini is? A. Well, he must be, he is doing enough for it.

Q. He has been active in behalf of that organization?

2969 A. Yes, very much so.

Q. Do you know whether George Sutton is? A. Yes, he told me he was a member himself.

Q. Yes, and do you know whether Harry Burns is? A. I couldn't tell you, I didn't see him.

Q. Do you know whether George O'Brien is? A. I couldn't tell you that either.

Q. He was, I think you said, one of the employees transferred out of your bureau into the inventory department? A. That's right.

Q. Do you know whether he is still in the inventory? A. I don't know that, sir.

2970

S. M. 1146

Q. You don't know where in the company he is employed, if at all? A. I don't know, I couldn't tell you.

Mr. Ransom: I think that's all.

(Witness excused.)

Mr. Moscovitz: Mr. Spalding.

Harry Spalding—For N.L.R.B.—Direct 2971

HARRY SPALDING called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. Mt. Kisco.

Q. New York? A. Yes.

Q. Are you employed by the Westchester Lighting Company? A. That's right.

Q. That is its full corporate name, isn't it? A. Yes. 2972

Q. How long have you been employed by that company? A. Since May, 1929.

Q. In what capacity are you employed at the present time? A. Inventory engineer.

Q. What are your duties as inventory engineer? A. I check overhead, completed overhead work, orders from an engineering, construction and accounting standpoint,

S. M. 1147

previous to their being sent to the accounting department.

Q. Are you at present a member of any labor organization? A. Yes, two. 2973

Q. Two of them? A. Yes.

Q. What is one of them? A. The American Federation Local 832 I.B.E.W.

Q. How long have you been a member of that organization? A. For about two months.

Q. Are you a member of any other labor organization or what is the other one, rather? A. The Independent Gas and Electric Employees.

Q. How long have you been a member of that organization? A. About six weeks.

Q. Were you a member of any other labor organiza-

2974 tion during the period of time that you have been employed by this company? A. Yes, the E.R.P.

Q. Did you hold any office in it? A. I did in its first year.

Q. What office? A. Representative.

Q. How long did you hold that office, one year? A. One year.

Q. Up until what time? A. Through '35.

S. M. 1148

2975 Q. Yes. A. I have forgotten what year that was.

Q. All right, and did you continue your membership in the E.R.P. until it went out of existence? A. Yes.

Q. And when, so far as you know, did it go out of existence? A. I don't know that it ever did.

Q. You have never been notified, is that so? A. That's right.

Q. You became a member of the Independent Gas Union about six months ago? A. Six weeks.

Q. About six weeks ago? A. Yes.

Q. Before that was it that you became a member of the I.B.E.W.? A. That's right.

2976 Q. Yes, before becoming a member of the I.B.E.W., did you participate in any meeting of employees called by a supervisory employee of the company? A. Yes.

Q. Where this question was discussed? A. Yes.

Q. Do you recall when that was? A. About the first of April, as near as I can recall.

S. M. 1149

Q. Where was the meeting called? A. In the division engineering office in White Plains, New York.

Q. That is of your company? A. The Westchester Company, yes.

2977

Q. Who called the meeting? A. The division engineer, through his assistant.

Q. What was the division engineer's name? A. Morris Brock.

Q. And what was the assistant's name? A. A. W. Howell.

Mr. Ransom: What was that name?

The Witness: A. W. Howell.

Q. (By Mr. Moscovitz) Is the engineer the person to whom you are responsible for your work? A. No.

2978

Q. Who is the person to whom you are responsible? A. My immediate superior is in Mt. Vernon.

Q. Yes, and what is his title? A. I don't know.

Q. What's his name? A. A. W. Dearman.

Judge Ransom: What's that?

The Witness: A. W. Dearman.

Q. (By Mr. Moscovitz) Do you know what group of

men the engineer who called this meeting had control over? A. All the employees in that office except two.

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Q. Who are the two? A. Myself and another man that does the same work as I do.

Q. Yes, and how many persons then are there who are directly responsible to the engineer? A. Practically 15.

Q. And you say you are responsible to this other person that you have named but whose title you don't know, is that right? A. That's right.

Q. Is he your immediate superior? A. That's right.

Q. Is there any working relationship between yourself and the engineer? A. What?

Q. Do you submit any work to him at all? A. Well, we check on his work.

2980

Q. You check on his work? A. Yes.

Q. After checking on his work, you then send your reports to your superior? A. That's right.

Q. Is the engineer on a weekly or a monthly payroll? A. I don't know.

Q. Now, you say the engineer called a meeting

S. M. 1151

through his assistant, and who attended? A. Every one in the office including us two.

2981

Q. Were the two of you asked to attend? A. Yes.

Q. By the assistant? A. By the usual routine letter that is passed from desk to desk and each one signs.

Q. When you say the usual routine letter, what do you mean? A. It is a form, the heading of which is made up of the names of the employees concerned and a space opposite each name for initialing and dating and the bottom two-thirds of the form is used for whatever the form is sent out to convey.

Q. Now, is that a form used by the company whenever it calls for a gathering of its employees? A. Not necessarily.

2982

Q. Well, in what cases does the management use such a form, if you know? A. For notifying the employees of changes in routine, it is a general form, it is just in the office.

Q. Now, interoffice form, is that it? A. That's right.

Q. And it was through the passing of this form that you were advised of the meeting and asked to attend, is that right? A. That's right.

S. M. 1152

Q. Do you recall what time of the day it was? A. In the morning about ten.

Q. And what took place at this meeting? A. The meeting was called for ten o'clock and shortly after ten o'clock Mr. F. Ungerer and Mr. Henry Geisler arrived from the general office in Mt. Vernon.

Q. Who are they? A. Mr. Ungerer was at that time the E.R.P. representative for the entire engineering department of the Westchester company.

Q. What does he do now? A. He is now the president of the I.B.E.W. local in Westchester.

Q. Do you know the number of the local? A. 832.

Q. And what is this other gentleman's name? A. 2984
Henry Geisler.

Q. What was he doing at that time? Where was he employed? A. Oh, he has charge of the engineering department in Westchester.

Q. In a supervisory capacity? A. Yes.

Q. How many men does he have charge of? A. The entire engineering force.

Q. How many men is that, do you know? A. I would guess, about 200.

S. M. 1153

Q. Is that your best approximation? A. Yes. 2985

Q. And what were you saying about him when I interrupted you? A. These two gentlemen came to hold this meeting.

Q. Yes. A. Well, we all drew up chairs and gathered around Mr. Unger, who stood and conveyed the information for the first time in brief detail in relation to what we had read in the papers a few days or weeks before, in relation to Mr. Carlisle's seeing fit to have the I.B.E.W. bargain for the system employees.

Q. Now, did you give this date as April 1st? A. Approximately.

Q. Well, was it at a time immediately after Mr.

Carlisle's announcement of recognition of the I.B.E.W.? A. A few days.

Q. A few days after that? A. That's all.

Q. Mr. Geisler was the supervisory employee in attendance whom you referred to. Were there any others? A. Mr. Brock and Mr. Howe.

Q. The engineer and the assistant engineer respectively? A. That's right.

Q. Is Mr. Geisler in a position superior to that of the engineer and assistant engineer? A. Mr. Geisler is Mr.
2987 Brock's immediate superior.

S. M. 1154

Q. Yes. And in the eight years that you have been employed in the company, did you ever know Mr. Geisler to either call or attend a meeting of employees? A. Not at which I have been.

Q. Had it ever been brought to your attention that he had? A. No.

Q. Is it his practice, do you know whether or not it has been his practice, to speak with employees throughout the company in groups? A. Well, in the normal
2988 routine of his work he comes in contact with certain of the employees, a minor portion, I would say, as far as I have observed.

Q. In the eight years that you were with the company, did you ever speak with him or he with you? A. No, not until this meeting.

Q. At the time this meeting was called, Mr. Unger was, so far as you know, acting as a representative of the E.R.P., or, rather, was he still, in so far as you know, a member of the E.R.P.? A. I don't know what he was then because that was during the time that the E.R.P. was supposedly being dissolved and the I.B.E.W. replacing it.

Q. Tell us what took place at the meeting? A. Mr. Unger explained in an indefinite manner—

Judge Ransom: Move to strike out "an indefinite manner".

S. M. 1155

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) Tell us what took place, what was said. A. That the management had seen fit to bargain with the I.B.E.W. and that he urged us to sign 2990
applications which he distributed among the 16 or 18 people present. I asked him—

Q. What applications? A. I.B.E.W. applications.

Q. Yes. A. I asked him what form of union, what sort of thing was this that the management was urging us to join, and he stated that he had no definite information on it, no constitutional by-laws, which I had asked him if he had with him.

Q. Was this all in the presence of Mr. Geisler? A. That's true.

Q. Yes. A. The discussion became heated on the part of Mr. Unger and Mrs. Geisler saw fit at that time to 2991
take over the discussion at which time Mr. Geisler stated that the employees must have faith in the company and urged us further to join the I.B.E.W., and I made the statement that it was not through a lack of faith in the company that I objected to this procedure, but it was a difference of principles, and the meeting closed, and at

S. M. 1156

its closing, one person signed and put in his application on the desk opposite Mr. Unger.

Q. Had the cards been passed out to the employees while they were at the meeting? A. That's true.

2992 Q. And do you recall who the one employee was? A. Mr. Unger—oh, the one employee who signed the card?

Q. Yes. A. That was Sam Lehman.

Q. Yes. A. And he made the statement, when he put his card on the table, that he felt that whatever the company did was all right with him. There were a few other questions asked.

Q. What were the other questions asked, do you recall? A. More or less similar to the ones I had asked.

2993 Q. By persons other than yourself? A. Yes.

Q. They asked of Mr. Geisler? A. Mr. Unger.

Q. And do you recall the questions? A. Mr. Tribou asked Mr. Unger how much time we had to sign up. Mr. Unger told him to sign up immediately.

Q. Was that the end of that meeting for that day? A. That was the end of the meeting, yes.

Q. Then what took place? A. Mr. Geisler came over

to me and asked me what I had on my chest, which made me somewhat mad, and I told him nothing.

2994 Q. Why did it make you mad? A. Well, the whole procedure of the company from the time Mr. Carlisle had seen fit to accept the I.B.E.W. as the bargaining agent for us employees, and without allowing us what, in my mind, was our right to decide for ourselves who was to be our bargaining agent, and this is the first time that the management had contacted me and the manner in which it was done I felt was entirely unethical and out of order and if he had not been my superior, I would have told him.

Q. And what did he say to you, outside of asking you— A. Well, he seemed to realize that I was angry and didn't press the point further.

2995

Q. Did you say anything to him? A. No.

Q. Was that the only meeting you had with Mr. Geisler? A. Yes.

Q. You had none after that at a later date? A. No.

Q. Was there any conversation between you and Mr. Geisler as to what would happen if a man refused to sign up? A. I don't remember that point being brought up.

Q. Was there any questioning during the time that Mr. Geisler was conducting the meeting as to what would happen if a man refused to sign up?

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S. M. 1158

Judge Ransom: I object to the witness' statement. Mr. Unger conducted the meeting.

Trial Examiner Gates: He may answer.

A. Yes, I do remember now.

Q. (By Mr. Moscovitz) What was it? A. Mr. Tribou brought that question up in just about those words, and Mr. Geisler again made a statement that the employees must have faith in what the company was doing.

Q. How long did that meeting take? A. I should judge about 20 minutes.

2997

Q. Then you all went back to work? A. That is true.

Q. No further meetings that day, is that right? A. Not that I know of.

Q. Were you approached at any time after that meeting by anyone to become a member of the I.B.E.W.? A. Yes.

Q. Was it while you were at work? A. Yes.

Q. Do you recall when? A. A few days later, evidently some checking had been done and they found I had not signed it yet and I was called by Mr. Dearman.

Q. By whom? A. Mr. Dearman.

2998 *Harry Spalding—For N.L.R.B.—Direct*

S. M. 1159

Q. That is your superior, is that right? A. That's right.

Q. Yes. A. And asked if I was going to sign, at which I told him "not yet," and a few days, later, I can't remember who called me, but someone did, and urged me to sign, and I said, "All right," I would, and I signed the application in pencil and sent it through.

Q. Well, do you recall who it was that gave you the application or was it an application that you had re-
2999 ceived at the Geisler meeting? A. That's the application.

Q. The one you had received? A. Yes.

Q. Do you recall who it was that asked you about the signature? A. Well, I sent that application through and in a few days it was brought back.

Q. You say you sent it through? A. In the company mail from White Plains to Mt. Vernon.

Q. To whom? A. Mr. Dearman.

Q. Yes, then what happened after you sent it to Mr. Dearman through the mail? A. He brought it back to me and showed me where an application signed in pencil
3000

S. M. 1160

was not legal and told me it was made out wrong and gave me another application and asked me to sign it. Oh, before that, the second application was handed me by Mr. Howe who had had a telephone call from Mr. Dearman and I filled out a second application and sent it through the mail.

Q. In other words, first there was your pencil one through the mail, is that right? A. That is true.

Q. Then a call from Mr. Howe to you? A. No, Mr. Howe was in the office.

Q. I see. A. And told me that my first application was not made out satisfactorily and that I had been requested through him to make out a second one.

Q. And did he tell you to whom to send it or to give it? A. No.

Q. Did you make it out? A. Yes.

Q. Who did you give it to? A. I sent it through the company mail to Mr. Dearman.

Q. Yes. A. And that I also made out wrong and it came back.

Q. Why was the second one wrong? A. I have for- 3002
gotten.

S. M. 1161

Q. All right. A. And each time I made out an application I stated to some one that I was making it out under protest, did not wish to have anything to do with the I.B.E.W.

Q. To whom did you make the statement of protest? A. To Mr. Dearman.

Q. Now, you sent your third card in again to Mr. Dearman, is that right? A. That is true.

Q. And was that wrong also? A. I think not, it 3003
stuck.

Q. What? A. It stayed.

Q. It stuck? A. Yes.

Q. All right, now, why were all of these application cards wrong? A. I did it purposely.

Q. Why? A. Because I didn't want to belong to the organization, I wanted to—

Q. You thought you would wear them down? A. No, I wanted them to stop wearing me down.

Q. All right. A. My job is somewhat complicated and this sort of thing was more or less nerve-wracking.

3004

Harry Spalding—For N.L.R.B.—Direct

S. M. 1162

Q. And did you then become a regular member of the Local of the I.B.E.W.? A. I presume so, they came around about ten days later and collected.

Q. Who did? A. I have forgotten who I paid the $1.50 initiation to.

Q. Well, did someone come around while you were at work and collect? A. That's true.

Q. Did they also collect from the other employees? A. Yes.

3005

Q. You saw that? A. Yes, but I have forgotten who did it.

Q. Well, was it one of the employees in your own department? A. I recall now, a Mr. Turner, a draftsman.

Q. Where is he a draftsman at? A. In the White Plains office.

Q. Is that in the central engineering department? A. Yes.

Q. Yes. A. Was requested over the phone, which is on my desk, by Mr. John Zucco.

Q. Who is he? A. He is an employee in the Mt.

3006 Vernon branch.

S. M. 1163

Q. Yes. A. To make out some, just ink receipts, and collect the dues from employees in the department. I think the reason he was selected was because he was a teller from our department in the E.R.P.

Judge Ransom: I move to strike out the volunteered statement as wholly incompetent.

The Witness: Mr. Turner said that he thought that was the reason.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

3007

Q. (By Mr. Moscovitz) And did this fellow collect dues, you say from you, as well as other men, when he came over? A. That's right.

Q. Was this in the presence of any supervisory employee or employees? A. Yes, Mr. Brock and Mr. Howell, he collected from Mr. Howell.

Q. Is Mr. Howell a member of the I.B.E.W.? A. Yes, so I understand.

Q. Have you gone to any of the meetings since becoming a member? A. I don't know of any meetings of our department in the I.B.E.W.

3008

Q. This all took place you say after Mr. Carlisle's

S. M. 1164

recognition of the I.B.E.W.? A. As near as I can remember, about ten days after.

Q. Yes, so that it ran through the balance of the month of April; do you recall whether any of this activity about which you have testified took place in the first part of May? A. Approximately the first part of May or the latter part of April, I have forgotten which.

Q. 1937? A. 1937.

3009

Q. Now, do you recall whether or not after you signed your final application card for membership in the I.B.E.W. and paid your initiation dues, any notices were posted on the company bulletin board that the I.B.E.W. was being organized—well, strike out "and"? A. Yes.

Q. What date? A. About May 15th.

Q. Do you recall on what bulletin board you saw that? A. In the central division engineering office.

Q. Is that in the glass case? A. No.

Q. The regular bulletin board? A. That's true.

Q. Was—what did the notice state? A. It was a full eight and a half by eleven page, it was typed full, various details in relation to the I.B.E.W.

3010 *Harry Spalding—For N.L.R.B.—Direct*

S. M. 1165

Q. Yes. A. As I recall among other things, it announced that the I.B.E.W. local 932, the charter for which had been granted by the A.F.ofL. was now the bargaining agent for the employees of the Westchester Lighting Company. I don't remember what else was on it.

Q. Yes, and is this the notice to which you refer?

(Document was passed to the witness.)

3011 A. Yes, there are three more notices on the bulletin board now.

Mr. Moscovitz: I offer it in evidence.

Trial Examiner Gates: There being no objection, it is admitted.

(Document referred to received in evidence marked Board's exhibit No. 16 for identification, Witness Spalding.)

Q. (By Mr. Moscovitz) Now, over what period of time did you notice the bulletin which I have just put into evidence as on the bulletin board? A. At least a week.

3012 Q. Were there any other bulletins on the board at that time? A. No, not in relation to labor.

Q. Now, have you seen any others? A. Sir?

Q. Have you seen any others? A. There are not at the present moment, or rather now we have three at the present moment as far as I know on the bulletin board in relation to I.B.E.W. activities.

Q. Have you ever seen any notices regarding the ac-

S. M. 1166

tivity of any other labor organization outside the I.B.E.W.? A. Never.

Q. Is the organization of which you are now a member of the Independent organization placed—have they placed bulletins on this bulletin board? A. No.

Q. Have you been granted the right to do so? A. I never requested it.

Q. You never requested it? A. No.

Q. What are these other bulletins that now appear on the bulletin board that you have just referred to? A. Somewhat similar to that one.

Q. Do you recall what they state, do you recall when they were put up? A. One is a copy of the I.B.E.W. 3014
news weekly, it is some form of newspaper that I have seen numerous copies of throughout the various departments that I come in contact with.

Q. Yes, what are the others? A. The other is a list of signatures of the previous E.R.P. general council.

Q. (By Mr. Moscovitz) List of signatures of the previous E.R.P. general council. A. Yes, in relation to their going over to the I.B.E.W.

Q. And what is there on the particular notice that

their signatures appear on it? A. Just a notice above 3015
the signatures in relation to the E.R.P. going over to the I.B.E.W.

Q. Yes, and does it indicate whether or not these persons who signed are now officers of the local of the I.B.E.W.? A. I don't remember.

Q. Do you recall their names? A. Mr. F. Unger.

Q. Now, you have already testified about his being connected with the I.B.E.W. Is that right? A. That's true.

Q. Yes. A. And about a dozen other names that I don't remember.

Q. Any other bulletin? A. Yes, there is another bul-

3016

letin somewhat similar to that one: I don't recall just what is on that.

Q. You say those bulletins are still on the Board? A. They were last night at five o'clock.

Q. That's all.

Trial Examiner Gates: Shall we take a recess for five minutes before cross examination?

Judge Ransom: That will be very agreeable.

Trial Examiner Gates: Recess for five min-

3017 utes.

(Whereupon a five minute recess was taken.)

AFTER RECESS

S. M. 1168

CROSS EXAMINATION:

Q. (By Judge Ransom) Mr. Spalding, what is your payroll title? A. Inventory engineer.

Q. And where is your work performed? A. In White Plains, that's where my office is.

3018 Q. Well, is the inventory work in the Westchester Lighting Company a separate and independent bureau or is it in the engineering or the accounting department? A. I understood, due to a very recent change, that the continuing property record bureau has been put under Mr. Watt and is a separate unit.

Q. Well, when, as of what time do you identify that change? A. Approximately two weeks ago and Mr. Dearman told me.

Q. Before that, was it identified with the engineering or the accounting department, as you understood it? A. The part of the continuing property records that I am in was under the engineering department.

3019

Q. But not a part of the division engineering office in White Plains? A. It was a part of the division engineering office but not a part of the functions of the division engineer in the department.

Q. That is your work at White Plains on the checking of work orders for overhead distribution installations was physically done in White Plains in the division en-

S. M. 1169

gineer's office? A. That's true.

3020

Q. But you were not responsible to the division engineer or the assistant division engineer in the White Plains office? A. That's true.

Q. Your responsibility was to Mr. Dearman in the Mt. Vernon office? A. That's true.

Q. And do you know what Mr. Dearman's payroll title was, if any? A. He told me that he didn't know.

Q. Well, did Mr. Dearman devote all of his time to this inventory work with respect to the continuing property records? A. As far as I know.

Q. Yes. Now, the year that you were a representative under the E.R.P., what bureau did you represent? A. I represented the Mt. Kisco commercial department.

3021

Q. You then were in 1934 and '35 in the Mt. Kisco commercial department? A. For a little over a year, during the depression, I was transferred from the engineering into the commercial and then back again into the engineering department.

Q. During what period of time were you in the commercial department? A. I think in 1934, I have just forgotten the dates.

Q. And your duties then were at the Mt. Kisco office

S. M. 1170

of the company? A. That's true.

3022 *Harry Spalding—For N.L.R.B.—Cross*

Q. And what work were you doing in the commercial department at Mt. Kisco? A. Credit work.

Q. It was during that time that you were elected a bureau representative of the Mt. Kisco Commercial office? A. Departmental representative.

Q. Departmental— A. Departmental representative, I think they called it.

Q. You were on the departmental—you were departmental representative, then, of the commercial department? A. That's true.

3023 Q. For employees throughout the company? A. That's true. I was elected to that office in February, I believe, and about the first of August that same year I was transferred to the engineering department.

Q. And by February you mean February of 1934? A. I think it was previous to that.

Q. Before 1934? A. I can tell you in a minute. I think it was in 1933.

Q. Well, in any event, you were not nominated and elected to that place in the department council by the employees of the commercial department at Mt. Kisco commercial office? A. Yes, sir.

3024

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Q. You said that this meeting of employees in the White Plains office and in the engineering office of the White Plains building was called to be held after one o'clock? A. That's correct.

Q. Is that correct? A. That's right.

Q. Generally for those 16 to 18 employees was that the lunch hour? A. No, for none of them.

Q. Was that after the lunch hour? A. No, it was not.

Q. It is not after the lunch hour? A. It was after the lunch hour.

Q. That is, these 16 or or 18 employees had their lunch hour when? A. 12 to 1.

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Q. So that was immediately on return from lunch? A. That's right.

Q. And was that true as to all of them? A. I didn't hear you.

Q. I say was that true as to all of them? A. Yes.

Q. This was immediately after their return from lunch? A. Yes.

Q. You said, I think, that Mr. Howell was a member and is a member of the I.B.E.W.? A. I think so.

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Q. Do you know whether Mr. Brock is or not? A. I don't know.

Q. Mr. Dearman, you say, is a member? A. I didn't say but I think he is.

Q. Yes. Do you know whether Mr. Geisler is a member. A. I don't know.

Q. Do you remember whether Mr. Turner, this draftsman in the White Plains office, do you know if he is a member? A. Yes, he is.

Q. He is? A. He is.

Q. Do you know whether John Succo is a member? A. I understand he is.

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Q. You said that this notification which was sent around to the employees in that office giving information of this meeting at one o'clock, it was in a general form that was used in the department for bringing the employees together? A. Not necessarily for that.

Q. Well, they are used, it was in the general form and type that was used for any information that anyone wished to convey to employees? A. As I remember, yes.

Q. Was it signed by anybody? A. I don't remember.

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Q. You are not able to state to the Board whether it

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bore any signature of Mr. Howell or Mr. Brock? A. No.

Q. So far as you were concerned, although you worked there in that office, you were not an employee of that division engineering department? A. That's right.

Q. Referring now to Board's exhibit No. 16, which you said was the notice that you saw on the Bulletin Board, this is addressed to the members, was it not? A. It states here, "to the members", it is unsigned.

Q. And you understood that it related to and was addressed to the members of Local B-832, of the

3029 I.B.E.W.? A. Yes.

Q. There wasn't any doubt in your mind about that, was there? A. None at all.

Q. Now, did you notice that this bulletin in the first instance calls attention to the appointment of two employees by the local to serve as the temporary business managers until an election was held for permanent officers? A. Yes, I read that.

Q. And it also conveyed information of the granting of the charter to Local B-832? A. I believe so.

Q. And it contained a notice of a meeting of the coun-

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cils in the I.B.E.W. to elect temporary officers and to appoint temporary committees? A. I don't just recall that.

Q. Well, refresh your recollection (handing Board's exhibit No. 16). A. I didn't read it all at the time.

Q. Well, do you read it now? A. Which?

Q. Paragraph 16, I call your attention to? A. Yes.

Q. Do you know whether that meeting for the election of temporary officers was held by the local? A. I don't know.

Q. And the last paragraph notified as to the formation of the temporary Board, executive Board, until there

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might be a general open meeting of all members to elect permanent officers? A. Yes.

Q. Do you know whether that temporary executive board was completed by the local? A. I think that is one of the notices that is on the bulletin board now. I am not sure.

Q. Are you able to state whether the general meeting of the local for electing of permanent officers and com-

S. M. 1175

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mittees has yet been held? A. To my knowledge, it has not.

Q. Well, do you mean by that so far as you know or that you don't know? A. So far as I know.

Q. It has not been held? A. It has not been held.

Q. In any event you have not seen it or received any notice of a recall of that meeting for the election of permanent officers? A. We have not.

Q. As far as you know the local is still functioning through the temporary officers and the temporary executive board and the temporary executive committee referred to in this and subsequent notices? A. So I understand.

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Q. I take it that you also read in this bulletin, "to facilitiate the collection of the initiation fee that the business managers had empowered various persons to collect such fees provided the collection is not made during working hours on the company's property? A. That's true.

Q. And your statement is that nevertheless you say you saw instances in which that was done? A. That's true.

Q. Your feeling is, as I understood your testimony, that you thought that each employee should have the

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S. M. 1176

right to choose the agency through which he would bargain with the management if he saw fit to bargain collectively? A. Yes, that is part of what I felt.

Q. Well, have you any objection, or do you feel there is anything wrong about the I.B.E.W. bargaining with the management on behalf of such of the employees as are members of the I.B.E.W.? Well, I will withdraw that question for the moment. Let me ask you this:

3035 Your testimony this morning assumed that the I.B.E.W. was recognized as the bargaining agency for all the employees, did you not? A. Yes, at that time that was the impression I had.

Q. Did your representative in the general council of your company under the E.R.P. or the chairman of that general council report to the employees in Westchester or to you, among others, what was said by Mr. Carlisle? At the meetings on April 25th and 21st, with the members of the general councils of the various companies? A. Not to my knowledge.

Q. Well, you understand, do you not, that your local 832, B-832, has been recognized by a contract as the

3036 collective bargaining agency for such employees in the Yonkers Electric Light and Power Company as belong to Local B-832? A. That's the way I understand.

Q. Didn't you read in the newspapers, at the time, April 20th, and 21st, that the recognition of the I.B.E.W.

S. M. 1177

was granted as a collective bargaining agency for such employees as were members of it?

Mr. Moscovitz: I object to that, Mr. Examiner. I do not understand that is the announcement that appeared in the newspaper.

3037

Judge Ransom: I am asking him if he read that announcement.

Trial Examiner Gates: He may answer.

A. No, I did not.

Q. (By Judge Ransom) I do not believe I asked you about Mr. Unger. As you understand it, he is the temporary president of Local 832, or temporary chairman? A. Yes.

Q. Do you know whether Mr. Geisler is a member of I.B.E.W. or not? A. No, I do not.

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Q. That's all.

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Judge Ransom asked you whether or not an election of officers took place as was stated would take place in Board's exhibit #16?

Judge Ransom: Do you mean temporary election or permanent election?

Q. (By Mr. Moscovitz) Either one of them. Have you received a notice of any meeting from the local?

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S. M. 1178

A. I have never received a notice from the I.B.E.W. as a member.

Q. All right. Now, you do not have any objection to the I.B.E.W. representing its members, do you? A. Well, I am a member of it.

Q. But will you first answer that question. You have no objection, as such, to a labor organization representing its members, do you? A. That would be none of my business.

Q. But you do object, don't you, to a company, through its representatives, forcing men to become mem-

3040

bers of that particular organization or any labor organization; don't you? A. Well, I would object strenuously if they did that to me.

Q. As was done to you? A. Right.

Q. You want the men to have a free choice of representation or a free choice of becoming a member of a labor organization; don't you? A. I would like that for myself, yes.

Q. And that is the theory and philosophy to which you subscribe; isn't it? A. Yes.

3041 Q. That's all.

Examination by Trial Examiner:

Q. (By Trial Examiner Gates) You referred to a

S. M. 1179

man named Turner, I believe, you said he was a teller in the employee representation plan. Is that correct? A. Yes.

Q. Is that what you stated? A. Yes.

Q. What is a teller? A. There are tellers merely for the election.

3042 Q. I see. A. They are elected at the same time the alternates and the representatives are.

RECROSS EXAMINATION:

Q. (By Judge Ransom) A teller is a person who is elected by the employees to serve, or was elected, to serve in a board of tellers which had charge of the preparation of ballots and the holding of the elections? A. Yes.

Q. And the counting and announcing of the results? Of the elections? A. That is the way it is, I believe.

Q. And that was the system under which the elec-

tions were conducted for the choice of representatives for the E.R.P.? A. Yes, that is according to the by-laws of the E.R.P. as I remember it.

Q. And Mr. Turner was an elected member of the

S. M. 1180

Board of Tellers under the E.R.P.? A. I don't know if he was on the board of tellers, but he was one of the district tellers.

Q. One of the district tellers. That is, he was one of the tellers who in the White Plains district— 3044 A. Engineering department.

Q. —engineering department, acted for the employees in the conduct of that election? A. That's right.

Q. Do you know whether Mr. Turner was and is a member of the I.B.E.W.? A. I know that he is.

Q. (By Trial Examiner Gates) The tellers, then, have no active function except once a year during the annual election? A. According to the by-laws they would function if a special election would be called in addition.

Q. (By Judge Ransom) They would have charge of receiving the nominations, petitions, preparing the 3045 ballots? A. Yes.

Q. Supervising the election, enforcing the rules, governing the election? A. Yes.

Q. And then counting the ballots and posting the results of the ballots? A. That's right.

Q. (By Trial Examiner Gates) These bulletin boards

S. M. 1181

that you referred to on which these several notices have been posted, are they locked? A. No.

Q. So that anyone would have access to them? A. That's true.

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Q. Is there any regulation as to employees posting such notices? Do they have to be countersigned by the company officials or anything of that kind? A. I don't know exactly whether they would or not. I should say the manner in which bulletins are put on the bulletin board would be governed by the man in charge of the department. It would come under the supervision for which he is put there.

Q. Do employees have to obtain permission for posting before posting them? A. I don't know. I would
3047 think so, it would be common sense, in keeping with the policies and functions of the company. This bulletin board is right at the door and every one has to pass it going in and out of the main opening of that office.

Q. (By Judge Ransom) Are you speaking now about the bulletin board up in this engineering division office? A. That's true.

Q. That is it, it is just inside the door through which employees enter and by which they leave that division

S. M. 1182

office? A. There is another entrance but that is the
3048 main one.

Q. And this is an open bulletin board on which any notices can be put up with a thumb tack? A. That's true.

Q. And it is the bulletin board of the division? A. That's right.

Q. It is not out in the general corridor, it is within the division office? A. That's true.

Q. Have you ever had any occasion to either post bulletins or notices of any kind on it or to seek permission to do so? A. No, sir.

Q. And you don't know who if anybody has it in charge? A. Well, I would be governed by—

3049

Q. Well, do you know who, if anybody, in the division has it in charge? A. I don't think anyone is in charge of the bulletin board specifically.

Q. And you see on it from time to time posted notices of a character that relates to or might interest the employees? A. That's true, safety regulations and all that sort of thing.

Q. And social meetings of employees, groups? A. Yes.

S. M. 1183

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Q. And the like? A. Yes.

Q. (By Mr. Moscovitz) So you see company notices on the bulletin board, is that it? A. Yes.

Q. Can you tell me now the person in charge of the division on which this bulletin board appears? A. Mr. Brock.

Q. Would you say that the charge of the bulletin board as well as the charge of other paraphernalia and equipment—

Judge Ransom: I object to leading the witness, he testified he didn't know and doesn't have any idea about this. 3051

Trial Examiner Gates: He may answer.

The Witness: I have an idea of who is in charge, Mr. Brock would be the logical person to be responsible for that bulletin board.

Q. (By Judge Ransom) You assume that he is responsible for anything in the division? A. Within reason, yes.

Q. (By Mr. Moscovitz) It is the company's bulletin board, isn't it? A. Certainly.

Mr. Moscovitz: That's all.

Judge Ransom: That's all.

3052 *Harry Spalding—For N.L.R.B.—Recross*

Q. (By Trial Examiner Gates) Does Mr. Brock keep

S. M. 1184

track of your time or where do you report the time? A. I send my time through to Mr. Dearman in the company mail each week.

Q. (By Judge Ransom) When you speak of company mail, you mean some system within the company by which communications for example between you and Mr. Dearman pass back and forth? A. That is true.

3053 Q. They don't go in the United States mail? A. No.

Q. It is an intercompany system? A. Yes.

Q. And messages from you to Mr. Dearman at the Mt. Vernon office or from him back to you of any character would be exchanged in that way? A. That is true.

Q. (By Trial Examiner Gates) This form, the notice of that meeting, is a form, mimeographed form, multigraphed? A. Yes.

Q. Does your name appear on it? A. No, it is generally either written in or typed in separately.

Q. Do you recall how it was on this particular notice? A. No, I don't.

3054 Q. Was it on this? A. I don't know.

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Q. It was handed to you? A. Yes. As usual they are passed from desk to desk and it turned up on my desk and I remember it.

Q. Did you initial it and pass it on? A. I don't know whether I initialed it or not.

Q. Did such things normally reach your desk? A. Yes.

Q. Any general notices in the office? A. Well, only things that are of general interest, there are some things

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that are of no interest to myself and this other man and we do not receive those.

Trial Examiner Gates: That is all.

Q. (By Mr. Ransom) You don't know whether your name was on it or not? A. I don't know.

Q. Well, was this simply an otherwise blank sheet of paper on which the notice was mimeographed and then above that or below it the names are typed in or written in? A. No, the names are mimeographed in, I believe.

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Q. The names of those who must go? A. Yes.

Q. And whatever information is contained in the notice is likewise mimeographed in? A. No.

S. M. 1186

Q. What's that? A. Typewritten.

Q. Typewritten? A. Yes.

Q. And I think you said that you don't know whether it bore any signature or identification? A. No, but all notices are supposed to be signed by the assistant or the engineer.

Q. But you have not any idea whether there was or not? A. No, I do not.

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Trial Examiner Gates: Do you recall approximately the date of that meeting or can you testify as to that?

The Witness: I can't remember the exact date of that meeting.

Trial Examiner Gates: Do you remember the approximate date, when was it in relation to Mr. Carlisle's announcement? A. It was, as I remember it, about ten days later.

Judge Ransom: That will be the last of April or about May 1st?

3058 *William J. Balch—For N.L.R.B.—Direct*

The Witness: I can't remember just what date it was.

Trial Examiner Gates: That is all.

Judge Ransom: That is all.

(Witness excused.)

Mr. Moscovitz: I will call Mr. Balch.

WILLIAM J. BALCH, called as a witness for the National Labor Relations Board, being first duly sworn, tes-

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S. M. 1187

tified as follows:

DIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Where do you live? A. 2326 121st Street, College Point, Long Island.

Q. Who are you employed by? A. New York and Queens Electric Light and Power Company.

Q. How long have you been so employed? A. Since August 20th, 1930.

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Q. What kind of work are you doing? A. I am a clerk.

Q. In what department? A. The Elmhurst Overhead Distribution Department.

Q. Any division of the department? A. The overhead bureau.

Q. How long have you been in that division? A. Approximately seven months.

Q. Are you a member of any labor organization? A. I am.

Q. The E.U.R.W.? A. C.I.O., yes.

Q. C.I.O.? A. Yes.

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Q. How long have you been a member of that organization? A. Since April, 1937.

Q. Before that were you a member of the I.B.E.W.?

S. M. 1188

A. No.

Q. Were you a member of the E.R.P.? A. Yes, sir.

Q. Until it went out of existence? A. Yes.

Q. Or at least until you learned that it was not being actively functioned, is that it? A. That's right.

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Q. Do you know Mr.—strike that out please. Were you approached by anyone either before or after the E.R.P. became inactive while you were at work to become a member of the I.B.E.W.? A. I had a discussion with Mr. Albert Martini, a representative.

Q. When was that? A. On May 12th.

Q. 1937? A. In the office.

Q. 1937? A. 1937.

Q. Yes. And was he a person regularly employed in your office? A. No, he was a lineman.

Q. A lineman? A. That's right.

Q. Supposed to work out in the field? A. That's correct.

3063

S. M. 1189

Q. Yes, what happened? A. Well, he was about, he entered the office for the purpose of collecting dues for the A.F.ofL.

Q. Yes. And as he was— A. As he was about to leave, I asked him if he could change a ten dollar bill. The purpose of that particular question was to find out if he had collected any dues, and he said that he had been only successful in collecting from three or four.

Q. In your office? A. Not only in the office but from anyone that he had called into the office.

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Q. Yes, had he been calling persons into the office? A. He had.

Q. You saw that? A. I did.

Q. In whose office was he in? A. Mr. Connelly's office.

Q. Who is Mr. Connelly? A. District superintendent.

Q. Did he have charge of the whole district? A. That's right, Elmhurst overhead.

Q. How many men under him approximately? A. Approximately 170 or 180 men.

3065 Q. Yes. Did you notice whether or not Mr. Martini

S. M. 1190

had with him at that time any application cards of the I.B.E.W.? A. At the moment of asking that question, he did not have the cards in his hand so far as I could see with him, but previous to that, he had them.

Q. On the same day. A. On the same day, in the office.

Q. When he was going into the office or while he was in the office? A. Well, while he was in the office because, as I returned from lunch, he asked me what I thought of
3066 the American Federation of Labor and I told him that my lunch hour was not up then and that afterwards I would come back and speak to him about it, so when I returned we continued the discussion.

Q. In the office? A. In the office.

Q. Yes. A. So he again asked the question as to what I thought of the American Federation of Labor and I told him that the whole set-up smacked of company unionism.

Q. You mean the set-up in the particular plant, company? A. Not only in our company but throughout the whole system that the set-up of the American Federation of Labor as presented to us—

S. M. 1191

Q. You mean in the I.B.E.W.? A. That's right.

Q. Yes? A. Smacked of company unionism, that the same officers who were now in the company union were going to take over the reins and control the I.B.E.W.

Judge Ransom: I move to strike out the witness' argument in behalf of the C.I.O.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception. I move to strike out his characterization of company union. 3068

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

The Witness: That the previous contacts I had as an employee representative gave me sufficient information, knowledge about that employee representation plan to base an accurate observation and an accurate opinion.

Q. (By Mr. Moscovitz) How long had you been a representative of the E.R.P.? A. I was elected a representative on April 6th or April 12th, 1934, in the construction bureau and was chairman of the construction bureau, served on the department council. 3069

S. M. 1192

Q. Will you continue telling us what conversation you had with Mr. Martini? A. I asked Mr. Martini why the general council, as a body, a representative body of all the employees, did not request the management for the right to grant the employees the right to vote and determine for themselves which organization they wished. He merely shrugged his shoulders, did not answer the question. I cannot recall all the conversation that took place at that time.

3070 *William J. Balch—For N.L.R.B.—Direct*

Q. Did you have any further conversation with him at any other time? A. I have had several discussions with him.

Q. How long did Mr. Martini remain in the office before you went out to lunch? A. He arrived at the office about ten or eleven and he remained there until shortly after two o'clock.

Q. And during that period of time, you noticed him calling persons in regarding the signing of I.B.E.W. cards. Is that right? A. That is correct.

3071 Q. Did he turn up at any time after that in the same office and do the same thing? A. He came into the office to obtain locations for the gangs out in the field.

Q. What do you mean, to obtain locations for the

S. M. 1193

gangs? A. Our office has all the information concerning the location of where the workmen were in the field and as Mr. Martini came in there for the purpose of obtaining that information—

Q. When was that? A. It was after that particular day, but the exact date I don't know.

3072 Q. I see. After May 12th; is that right? A. That's right.

Q. And to whom did he go to secure these locations? A. Why, he either went to the chief clerk, Mr. Curry, or he went to one of the general foremen. I don't recall particularly. I know he was in there but as to whom he spoke to particularly there, I couldn't say.

Q. Mr. Martini is still employed there? A. That's right.

Q. In what capacity? A. I believe he is listed as a second grade lineman. At least, his card shows that.

Q. What other work does he do at the present time, do you know? A. Besides lineman, I don't know. I know he is a lineman.

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Q. Do you know whether or not he is now an employee representative of the I.B.E.W. local, or whether he has an official connection with the I.B.E.W. local? A. Outside of seeking to have men join, that is all I know

S. M. 1194

about him. I don't know whether he is a member or not.

Q. All you know is, he was engaged in this organization work at the time you stated. Is that right? A. That's correct.

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Q. That's all.

CROSS EXAMINATION:

Q. (By Mr. Ransom) Now, when did you join the C.I.O.? Can you fix the date? A. In April. The exact date was the day that the pledge cards were sent around by the employee representation plan. Mr. Martini had asked me.

Q. Now, I am just asking you for a date. Can we fix the date? Was the first part of April? A. I couldn't fix the date. I don't know.

Q. You cannot give the Board any better idea than that it was in April? A. It was in April.

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Q. That is all you can say about it? A. Well, it was the same day the pledge cards were—

Q. Can you fix the date? A. I cannot.

Q. What are your duties as clerk? A. I handle material requisitions and all meter orders.

Q. And that is in the Elmhurst district office of the

S. M. 1195

distribution department? A. That is correct.

Q. And you have been there seven months in that department? A. That's correct.

3076 *William J. Balch—For N.L.R.B.—Cross*

Q. That is in overhead bureau? A. That's right.

Q. And before that, where were you employed? A. In the inventory bureau department.

Q. When were you transferred out of the inventory bureau? A. Well, approximately six or seven months previous to that.

Q. What happened to the inventory bureau? A. What happened to it?

Q. Yes. I mean, why were you transferred out of the inventory bureau? A. I asked to be transferred out
3077 of there.

Q. You asked to be transferred? A. Yes.

Q. How many employees were there in that bureau when you left, or were transferred? A. Oh, there were quite a few.

Q. I mean, can you give any idea? A. That were left in the bureau?

Q. Yes. A. No, I don't know how many were left in the bureau.

Q. Haven't any idea? A. No.

S. M. 1196

3078 Q. Well, what work did you do in the inventory bureau? A. We transferred the information obtained in the field to what were known as B Sheet records.

Q. Who talked with you about joining the C.I.O.? A. Nobody.

Q. No one ever did? A. No.

Q. Were you in the inventory bureau at the time that you were elected to a bureau council under the E.R.P.? A. I was in that bureau and was elected as representative-at-large and also representative.

Q. Well, you were elected to what bureau council? A. The continuing property records bureau.

Q. That is, that continuing property records bureau had a council of its own? A. Yes.

3079

Q. And the inventory department was in that bureau? A. Yes.

Q. At that time? A. That's right.

Q. So you were on both the bureau council and also on the department council? A. I was chairman of the department council.

Q. Of what department? A. The inventory department.

S. M. 1197

3080

Q. And a member of the bureau council? A. That's right.

Q. Is Mr. Curry the chief clerk of this district office of the overhead bureau? A. He is.

Q. That is the Elmhurst district? A. That's right.

Q. Do you know whether Mr. Curry is or is not a member of the C.I.O. or of the I.B.E.W.? A. He is a member of the I.B.E.W.

Q. You know that he is? A. I do, yes.

Q. Now, you referred to general foremen who were in that office at the time Mr. Martini came there. What general foremen did you have in mind? A. Well, there are usually three that are there. Now, I didn't specifically state that they were there at the time Mr. Martini came in.

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Q. The fact is, you don't know whether they were there? A. No, I said he could obtain his information from them if they were there or the chief clerk.

Q. That is, he might have gotten it from Mr. Curry or the general foreman? A. That's right, or from Mr. Conlan.

Q. And you don't know whether the general foremen

S M. 1198

that you mentioned were or were not members of the

3082 *William J. Balch—For N.L.R.B.—Cross*

I.B.E.W.? A. I am quite sure that the general foremen are not members of the I.B.E.W.

Q. And you can't give their names, the ones that were there when Mr. Martini came in? A. No.

Q. You can't give names? A. No, sir.

Q. When you held office under the E.R.P., you were nominated by the employees in the inventory department? A. That's correct.

Q. And elected by them? A. Yes, sir.

Q. And you were elected by your bureau chairman,
3083 or you were elected bureau chairman by the bureau council? A. That's right, yes, well, there was only two members, that is all.

Q. Yes, and how many members were there of this council of which you were chairman? A. Two.

Q. You yourself and one other? A. That's right.

Q. And you were chairman of both of them? A. I was.

Q. In 1935, you weren't a candidate for election, were

you? A. 1935?

3084 Q. Yes. A. I was not a candidate, but they elected me anyway.

Q. And did you serve? A. No, sir.

Q. You declined to serve and someone was selected? A. Someone else, yes, was selected, he received about four votes, I guess.

Q. Were you a candidate in '36? A. No, sir.

Q. You don't know, do you, whether temporary elections of officers had taken place in the I.B.E.W. local? A. Do I know of it?

Q. Do you know whether they had temporary elections? A. It was my understanding that nominations were held last night.

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Q. Well, that was for the permanent officers? A. You mean the temporary?

Q. The nominations as you understand it, that were made last night, were they temporary officers? A. Well, I am not familiar with all the activities of the I.B.E.W.

Q. Well, that is excusable, that is, you don't know whether the nominations that were made by the local last night were for temporary or permanent officers?

S. M. 1200

A. No, I do not. 3086

Judge Ransom: That's all.

Trial Examiner Gates: That is all.

(Witness excused.)

FRANK J. BRADY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. 28 Carroll St., Yonkers, N. Y. 3087

Q. Who are you employed by at the present time? A. The Yonkers Electric Light & Power Company.

Q. What kind of work are you doing? A. At the present time I am in the Mt. Vernon office of the Westchester Lighting Company, working on fixed capital work, I believe my title is inventory engineer.

Q. What is the department? A. C.P.R. engineering department.

Q. How long have you been employed there? A. I have been there for three months.

Q. How long have you worked for the company? A. Eight years.

3088 *Frank J. Brady—For N.L.R.B.—Direct*

Q. Are you a member of any labor organization? A. I am a member, at the present time I am chairman of the Independent Gas & Electrical organization.

S. M. 1201

Q. Chairman of the whole organization? A. That's right.

Q. How long have you been a member of that organization? A. Approximately seven weeks.

3089 Q. How long have you been chairman? A. Approximately the same time, seven weeks.

Q. Are you a member of any other labor organization? A. No, sir, I am not.

Q. Were you a member of any other labor organization before you became a member of the independent organization? A. I was vice-chairman of the general council of the E.R.P.

Q. How long were you vice-chairman? A. Vice-chairman for just approximately a month.

Q. How long were you a member of the E.R.P.? A. I was a member of the E.R.P. for four years.

3090 Q. Before becoming a member of the Independent Gas Works organization, were you called into the office of the president of your company? A. Before becoming a member of the Independent Gas & Electric Union I was called into the office of Mr. Prizzano, who is the president of the Westchester Lighting Company and Yonkers Electric Light & Power Company.

Q. Do you recall the date? A. It was approximately two days after Mr. Carlisle had recognized the American Federation of Labor, the I.B.E.W.

S. M. 1202

Q. That was in April, 1937? A. That's right.

Q. And you were called in by Mr. Prizzano himself? A. I was not.

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Q. Tell us how you got in there. A. I went into Mr. Prizzano's office myself, and Mr. Drury and Mr. Newman; Mr. Newman was the secretary of the E.R.P. and Mr. Drury was the chairman of the E.R.P. At that time I was contacted by Mr. Drury and Mr. Drury asked me to go to Mr. Prizzano's office.

We went to Mr. Prizzano.

Q. Did Drury tell you why you were to go? A. No, I had a pretty good idea, though, because the day previous I was down on 15th Street and I knew what had happened.

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Q. What happened the day previous to that on 15th Street? A. Down on 15th Street, that was the day, I believe, after Mr. Carlisle had recognized the American Federation of Labor and the employees, that is, the E.R.P., was in a heated discussion as to whether they should join the I.B.E.W. or whether they should have an organization of their own. They did not come to any definite conclusion at that time. That was the last contact I had with them.

Q. Where was this heated discussion taking place? A. It was held in the council room, I believe, of the

S. M.-1203

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E.R.P. on 15th Street, although I am not positive, I did not know.

Q. You are not positive of the address? A. That's right.

Q. Were you there? A. I was at 15th Street.

Q. Is that company property? A. The Consolidated Edison Company building.

Q. Was it just a meeting of the employees who belonged to the plan, or were there supervisory employees there, too? A. Well, as far as I know it was just employees that belonged to the plan. I did not see anybody in a supervisory capacity at that time.

3094 *Frank J. Brady—For N.L.R.B.—Direct*

Q. It was called as a result of the announcement made by Mr. Carlisle? A. That's right.

Q. All right, tell us what took place when you go to Mr. Prizzano's office? A. Well, when we got into Mr. Prizzano's office we got talking about recognition of the I.B.E.W. by Mr. Carlisle.

Q. Who got talking about it? A. Mr. Prizzano and myself and Mr. Drury and Mr. Newman.

Q. Well, I wish, if you could, be a little more specific about how the meeting started. A. How it started?

3095

S. M. 1204

Q. Yes, who did the opening of the questions? A. Well, we contacted Mr. Prizzano at first, that is, we opened the conversation when we got in there.

Q. When you say "we," do you mean you or Mr. Drury or who? A. Well, I would say Mr. Drury, speaking for the other two men, he was the chairman, of course, Mr. Drury told him at that time that he did not see why we could not have an independent organization of our own and that was entirely my thought at the time, and I also brought that out to Mr. Prizzano.

3096 Mr. Prizzano said that the independent union at that time was out of the picture, he said that Mr. Carlisle had seen fit to recognize the American Federation of Labor and he thought that we should do likewise, and I believe that's about all that transpired at that meeting with him.

Q. All right, that's the only meeting you ever had with him? A. That's right.

Q. All right, you left then, is that right? A. That's right.

Q. What did you do then? A. I went back to my office, that is the men I represent, I represent the engineering department in Yonkers, having come from there previous to being in the C.P.R., I went back there

3097

and I called a meeting of my men to find out their sentiments.

S. M. 1205

Q. How many men? A. 32 men.

Q. Yes. A. I took a vote in the engineering department to find out whether they wanted an independent local, the C.I.O. or the I.B.E.W. and the men at that time voted 100 per cent independent, no dissenting vote.

Q. Then, did you leave. A That's right.

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Q. What happened after you left, if you know? A. After I left the office I went back to Mt. Vernon and I came back again in the afternoon, and that afternoon when I got back there I found Mr. John H. Zoller distributing cards.

Q. Who is Mr. John H. Zoller? A. Mr. John H. Zoller is distribution engineer of the Yonkers Electric Light & Power Company, distributing cards for the I.B.E.W.

Q. Is his position a supervisory one? A. Yes.

Q. In what respect is it supervisory? A. Why, as far as I know, as far as I understand it, he had charge of the Yonker System.

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Q. The entire system? A. That's right, the distribution work.

S. M. 1206

Q. How many men? A. That I don't know, I imagine about 350.

Q. What was he doing? A. He was distributing cards for the I.B.E.W.

Q. Where was he distributing? A. At the engineering department, 45 South Broadway, Yonkers.

Q. What did he do with the cards, do you know?

3100 *Frank J. Brady—For N.L.R.B.—Direct*

Did you notice whether or not any of the men signed them and gave them back to him? A. Yes, they did.

Q. All of them or just some of them? A. Well, I would say all of them.

Q. What did he do with the cards, do you know? A. He took them back to Mt. Vernon with him and turned them over to George B. Cornell, who is chief engineer of the Westchester Lighting & Power Company and the Yonkers Electric Light & Power Company.

Q. What was done with the cards then? A. I don't
3101 know. They remained in Mr. Cornell's office as far as I know.

Q. Do you know whether or not any of the applications for the I.B.E.W. were typed in the company office? A. Yes, they were.

S. M. 1207

Q. When was that? A. I don't know the exact date, the early part of May.

Q. May, 1937? A. That's right.

Q. Tell us about that. A. One of the girls in the office, a girl by the name of Doherty, she typed the cards
3102 at that time.

Q. Is that Geraldine Doherty? A. Yes.

Q. Did you see that A. I witnessed it.

Q. How did it come about; who was there? A. At the time the cards were typed?

Q. Yes. A. I believe everybody in the office was there.

Q. The foremen or the supervisory employees? A. That's right.

Q. Were employees being called in to sign up? A. At that time?

Q. Yes. A No, sir.

Q. Who was she typing the cards up for? A. She

was typing them up for the employees, that is, she was typing the employees' names on the I.B.E.W. cards.

Q. Then, who would she give the cards to? A. The cards went in to Mr. Geissler.

S. M. 1208

Q. Who is Mr. Geissler? A. Mr. Geissler is one of the engineers. I believe he is a chief engineer in Westchester.

Q. I see. And was she using information regarding the employees whose names she typed on the cards from 3104
personnel records of the company? A. Not from the personnel records, but she had a typed sheet which she was taking it off from.

Q. That information was secured from the personnel files? A. It possibly could come from there.

Q. Do you know? A. I couldn't say.

Q. All right. Did you notice whether or not at any time after this incident I.B.E.W. cards were circulated among the men while at work by any supervisory employee? A. No, sir, I can't say that I did.

Q. Do you know whether or not any requests were made of the men to become members of the I.B.E.W. 3105
after that? A. Mr. Zoller requested that I become a member of the I.B.E.W.

Q. When was that? A. That was also in the early part of May.

Q. 1937? A. 1937.

S. M. 1209

Q. Tell us about it. A. I called in to Mr.—I was called into Mr. Zoller's office and he asked me if I wanted to sign up, he told me I was the last man in the department, and he asked me if I would like to sign a card.

Naturally, I said I didn't. I said I didn't want to belong to the I.B.E.W., and the discussion ended there. He said no more to me.

Q. Do you know Sam Unger? A. Not Sam Unger. I know Fritz Unger.

Q. Where is he employed? A. He is employed by the Westchester Lighting Company in the engineering division.

Q. What doing? A. I believe he is in the estimating.

3107 Q. Do you know whether or not he has been collecting dues for the I.B.E.W.? A. Yes, he has.

Q. When did you see him collecting dues? A. I saw him on company time in the early part of May. I can't give you the exact dates on that.

Q. Where did you see him? A. In the engineering department of the Westchester Lighting Company and the G. O. Building, on First Avenue and First Street, Mt. Vernon.

Q. Was it done in the presence of general foremen or

3108 supervisory employees of any kind? A. I can't say that they were watching him, but they were there.

Q. Do you know whether or not any other persons were doing the same thing? A. Yes, there was another gentleman by the name of Zucco.

Q. Was he doing the same thing? A. Yes.

Q. About the same time? A. Yes.

Q. In the same place? A. That's right.

Q. Both men working at the same particular period of time. Is that right? A. Yes.

Q. Do you know whether or not they collected any dues? A. Well, I can't say that I saw the dues being actually paid.

3109

Q. Has there been any discussion with you by any one recently— A. Recently?

Q. About the continuation of the E.R.P.? A. No, I can't say that there has.

Q. After the announcement from Mr. Carlisle about the I.B.E.W., was there any discussion with you or any one regarding the continuation of the E.R.P.? A. I can't say that I recall any.

S. M. 1211

3110

Q. Any statement as to whether or not campaigning would be permitted any longer from the E.R.P.? A. Well, as far as that statement, Mr. George B. Cornell. who was the chief engineer of the Yonkers Electric Light & Power Company and the Westchester Lighting Company, he come down to my desk in the engineering department—

Q. When? A. The second week in May, 1937, approximately.

Q. Yes. A. He told me at that time that if I didn't stop my campaigning for an independent local union, he would have to ask for my resignation.

3111

Q. Had you been doing that? A. No, sir, I had not, I told him I had not, but he told me that I was campaigning on company time.

Q. Had you been campaigning on company time? A. No, sir, I had not, although I had been accused of it. I told him I had not been campaigning on company time.

Q. Did you make any statement to him about any other organization? A. I told him that if the I.B.E.W. was to be allowed to continue its activity, I didn't see why I shouldn't be allowed to continue mine.

Q. What did he say? A. He didn't give me any definite answer.

3112 *Frank J. Brady—For N.L.R.B.—Direct*

S. M. 1212

Q. He left? A. That's right.

Q. And did you refer before to Mr. John Drury? A. Mr. James Drury.

Q. Yes, and did you refer to John Murphy? A. No, sir, I did not.

Q. Who is John Murphy? A. John Murphy is an employee of the Consumers Service department in the Westchester Lighting Company.

3113 Q. At the present time? What kind of work is he employed to do? A. At the present time?

Q. No, as a consumer service employee? A. I don't know.

Q. Was he a member of the E.R.P.? A. Yes.

Q. In what capacity? A. Representative of the department council.

Q. And you testified that Mr. Drury was chairman of the Yonkers council? A. That's right.

Q. Do you know what they are doing at the present time? A. At the present time Mr. Drury and Mr. Murphy are employed as business agents for the I.B.E.W.

3114 S. M. 1213

Q. What local? A. Local B-832.

Q. Do you know whether or not either one of them took any leave of absence from the company? A. Yes, I do. Mr. Drury told me he was given leave of absence from the company to organize for the I.B.E.W.

Q. When was that? A. I can't remember my dates very well, but it was the early part of May.

Q. How long was his leave for? A. He told me at the time for one month, but he hasn't come back to work as yet.

Q. How about Mr. Murphy, do you know about him?

3115

A. I know—that is, I understand—Mr. Murphy is acting under the same, that the same—

Q. Leave of absence arrangement? A. That's right.

Q. But he didn't make any statement to you about it as Mr. Drury did, is that right? A That's right.

Mr. Moscovitz: That's all.

By the way, you are still employed, aren't you?

The Witness: Yes, I was when I left this morning.

Judge Ransom: It is one o'clock, Mr. Examiner, may we suspend at this time? 3116

Trial Examiner Gates: We will suspend now

S. M. 1214

until two o'clock, if you wish.

(Whereupon, at 1:00 o'clock p.m., an adjournment was taken until two o'clock of the same day.)

AFTERNOON SESSION

FRANK J. BRADY resumed the stand. 3117

Cross Examination:

Q. (By Mr. Ransom) When did you first go with the Yonkers Electric Light & Power Company as an employee? A. 1929.

Q. What kind of work? A. I was employed in the engineering department as a stenographer.

Q. As a what? A. A stenographer, in the engineering department.

Q. And how long did you continue at that work? A. One year.

Q. Then what? A. Clerk in the engineering department.

Q. How long? A. About two years.

Q. Then what? A. Estimator in the same department.

S. M. 1215

Q. Estimating on what? A. Estimating overhead and underground jobs.

Q. Then what was your next employment? A. Then I went into the C.P.R. department of the engineering de-
3119 partment in Mt. Vernon.

Q. What is the C.P.R. division? A. Just what it is?

Q. I mean, the Examiner probably is not as familiar as you and I might be with that. A. It is a continuing property record. My position in that department is analyzing overhead construction records that come in from the field, pole line work and so forth.

Q. And you have been in that work how long? A. About three months.

Q. What is your title now, payroll title? A. I believe my title, payroll title, is inventory engineer, but I cannot say, I am not positive, in other words.

Q. What is your rate of pay per week? A. I don't
3120 know whether I should answer that here.

Q. You would rather not give it— A. I would rather not.

Judge Ransom: All right, then, I withdraw it.

Q. (By Mr. Ransom) You were vice-president of the general council of the employees representation plan for what company. A. The Yonkers Electric Light & Power Company.

S. M. 1216

Q. Under the employees representation plan as it was in force, there were separate plans and separate elec-

tions and councils for the Yonkers Company and the Westchester Company? A. That's right.

Q. And the I.B.E.W. organization, as you understand it, there is one local in Westchester County? A. That's right.

Q. And that embraces employees in both companies? A. Yes, sir.

Q. Now, you were present, you said, at the meeting at 15th Street on April 21st, which was attended by the members of the general councils of the various companies? A. That's right.

3122

Q. Do you recall if a committee was appointed to wait upon Mr. Carlisle and ask him to appear and answer some questions? A. No, sir, I don't, I was not down there that day.

Q. You were not there that day? A. No, sir.

Q. You were there the day before? A. I was there the day that Mr. Ganley had contacted the I.B.E.W., I don't know whether it was the day before or not. I mean, I don't know.

Q. Well, you weren't present on either of the two days when Mr. Carlisle spoke to representatives of the

3123

S. M. 1217

E.R.P.? A. No, sir, I was not.

Q. Then the day that you were there was probably the 22nd of April? A. It probably was around that date.

Q. And was that the same day that the members of the former general council of Yonkers, of the Yonkers Company, went to see Mr. Prizzano? A. The members did not go, just the three of us went.

Q. I said the day that the three of you went? A. I believe it was the same day.

Q. Yes, do you know whether Mr. Drury, who was then your chairman, had attended these meetings at 15th

3124 Street on the two previous days? A. No, sir, I do not.

Q. Had Mr. Drury made any report to the general council of the Yonkers employees as to what had been stated by Mr. Carlisle on the two preceding days? A. No, sir, he did not.

Q. He had given you no information about it? A. No, sir.

Q. Have you read the newspapers? A. I read something in the newspapers, but I don't recall what it was.

Q. Well, then, was the first information that you had
3125 that Yonkers general council was no longer to be dealt

S. M. 1218

with in collective bargaining, was that the first information that you had on that received by you on April 22nd, the day that you went— A. I don't believe that statement was ever made to me personally. It may have been made to others.

Q. But the statement was made to you that any independent union was out of the picture? A. That's right.

Q. Did Mr. Pizzano say anything to you as to why the Westchester Lighting Company or the Yonkers Electric
3126 Light & Power Company could not continue to bargain collectively with the general councils of the Westchester or Yonkers Companies? A. Yes, he told me it was against the Doyle-Neustein Bill, which was shortly to be passed. In other words, it was going through one of the houses, I believe, at that time.

Q. Was this meeting that you called of the employees in the engineering department of the Yonkers Company on this same day, April 22nd? A. I believe it was, in the afternoon.

Q. You referred to a Mr. Zoller as one of the district engineers of the Yonkers Company. Do you know whether Mr. Zoller was and is a member of the I.B.E.W.?

3127

A. Mr. Zoller is the only distribution engineer in the Yonkers Company and is not a member of the I.B.E.W.

S. M. 1219

Q. You think he is not a member? A. That's right.

Q. Mr. Zucco, whom you spoke of as collecting dues. Do you know whether he is a member? A. Yes, he is.

Q. And, of course, Mr. Drury and Mr. John Murphy are members? A. Yes.

Q. And Mr. Unger? A. That is correct.

3128

Q. The request to you to join the I.B.E.W. was made by Mr. Zoller? A. That's right.

Q. Do you know whether he has any official relationship, that is, holds any office under the temporary organization of the Westchester Local of the I.B.E.W.? A. Who are you referring to?

Q. Mr. Zoller? A. Mr. Zoller?

Q. Yes. A. Mr. Zoller is the distribution engineer.

Q. Well, your answer is that he is not a— A. He is not a member of the I.B.E.W.

Q. I see. Miss Geraldine Doherty, whom you saw typing the applications,—do you know whether she is a

3129

S. M. 1220

member or not? A. I can't say for sure that she is.

Q. Was it your understanding that she is? A. It is my understanding that all the girls in the office were signed up with the I.B.E.W.

Q. What office are you now speaking about? A. The engineering department at the Westchester Lighting Company.

Q. That is at the Mt. Vernon office building? A. That's right.

Q. Is that right? A. That's right.

3130 Q. Did you see this typewritten list of names which she was typing of applications? A. Yes, I did.

Q. Have you any idea from what source it came, are you able to say? A. No, sir.

Q. Do I correctly understand you to state that Mr. George B. Cornell accused you of working for the independent union of gas and electric companies or employees on company time? A. That's right.

Q. Will you state that date, about when that conversation took place? A. I stated it was about the second

3131

S. M. 1221

week in May, or thereabouts.

Q. And he said that if you did not stop doing that work on company time, he would have to ask for your resignation? A. That's right.

Q. You have not been doing any work in behalf of that union on company time, have you? A. No, sir, I have not.

Q. Mr. Cornell has not asked for your resignation? A. No, sir.

Q. And you have continued ever since in your regu-

3132 lar work? A. Yes, sir.

Q. How many members has the Independent Gas & Electric Union of employees in Westchester County?

Mr. Moscovitz: I object to that, Mr. Examiner, I don't see that it has any relevancy to the issues before us.

Judge Ransom: They were brought in the case by Mr. Moscovitz on direct examination, although they were excluded from this proceeding upon his objection.

Mr. Moscovitz: They were excluded from the proceeding because of certain reasons that I ad-

vanced at that time, none of which had anything to do with the amount of membership. This witness is being called to give testimony which has nothing to do with the question of membership. It can do no more than embarrass or perhaps embarrass the organization or perhaps disclose in-

S. M. 1222

formation which might at a subsequent time be used to the organization's disadvantage.

3134

Trial Examiner Gates: Objection sustained.

Judge Ransom: Exception.

Q. (By Mr. Ransom) You spoke of 32 men or thereabouts as present at this meeting which you called in the engineers' department in Yonkers on the afternoon of April 22nd; are you able to state how many of them are now members of the I.B.E.W.? A. I can state definitely that 32 have signed cards, but none of them have paid their initiation fee.

Judge Ransom: That's all.

Mr. Moscovitz: That's all.

3135

Trial Examiner Gates: I have one question.

Mr. Moscovitz: I am sorry.

Examination by the Trial Examiner:

Q. (By Trial Examiner Gates) In connection with these cards that you saw typed out, do you know at whose request they were being typed? A. Who requested them?

Q. Yes. A. No, I could not answer that.

Q. Do you know whether the various employees requested the young lady to type them? A. Well, I don't think so because she was typing.

3136

S. M. 1223

Q. I beg your pardon. A. She had a bunch of them on her desk, so I don't know whether they were requested individually or by some person.

Q. From a list? A. Yes.

Q. On company time? A. That's right.

Trial Examiner Gates: That's all.

Q. (By Mr. Ransom) You don't know whether that list was a list of people who had signed up cards in some

3137 incorrect form or whether they were persons who had not yet signed cards at all, do you? A. The cards were signed by the men at the time.

Q. These were being filled in? A. They were being filled in, yes, sir.

Q. As these were cards on which employees had already signed their names? A. That's right.

Q. And Miss Doherty was filling in from some list or other information required by the application? A. That's right.

Q. As to department and title and whatever was required? A. The department and so on.

3138

Trial Examiner Gates: Who was superintending?

The Witness: Mr. Geissler.

Trial Examiner Gates: That is all.

(Witness excused.)

S. M. 1224

Mr. Moscovitz: I will call Miss Misbach.

Eleanor Misbach—For N.L.R.B.—Direct 3139

ELEANOR MISBACH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Miss Misbach? A. 4650 Kisskina Boulevard, Flushing.

Q. Flushing, Long Island? A. That's right.

Q. Are you presently employed by the Consolidated Edison Company? A. The New York & Queens Electric Light & Power Company. 3140

Q. How long have you worked for the company? A. 8 years. July 5th.

Q. What kind of work do you do there? A. First grade clerk, consumers accounting bureau.

Q. Yes, who is your superior? A. J. J. Smith.

Judge Ransom: What's the name?

The Witness: J. J. Smith.

Q. (By Mr. Moscovitz) How many other employees are there in your department? A. In the whole consumers accounting bureau?

Q. The bureau, yes. A. About 450. 3141

S. M. 1225

Q. Do you work in any division of that bureau? A. Yes, I do.

Q. What one? A. I work in a unit.

Q. What is the unit? A. Unit No. 2.

Q. How long have you been in that unit? A. Since May 8th.

Q. 1937? A. 1937.

Q. Now, were you— A. On May 12, 1937.

Q. Were you transferred to it, then, when it was

3142 moved downstairs? A. Yes, when it was moved during the change of system.

Q. Who was your superior in the present unit? A. Mr. Smith.

Judge Ransom: I didn't get the name of the unit.

The Witness: Unit No. 2.

Judge Ransom: Unit No. 2?

The Witness: Yes.

3143 Q. (By Mr. Moscovitz) What work were you doing before you were transferred to unit No. 2? A. I was in the extending division of the consumers' accounting bureau.

S. M. 1226

Q. Where is that building located? A. Bridge Plaza, Long Island City.

Q. And was there the same person, was the same person your superior at that time? A. Yes, that's right.

Q. Do you know Helen Seldon? A. Yes, I do.

Q. Is she in Unit No. 2? A. No, she is not.

3144 Q. But she was employed in the department from which you were transferred? A. That's right.

Q. Is that right? A. Yes.

Q. What was her work? A. Her duties were to give out the work, to distribute the work.

Q. Would she distribute the work to you? A. Yes, she did.

Q. She was in charge of your work? A. No, she wasn't in charge, she distributed the work.

Q. I see, who was her boss? A. Vincent Latronika.

Judge Ransom: Who?

The Witness: Vincent Latronika.

S. M. 1227

Q. (By Mr. Moscovitz) Do you know what his title was? A. Clerk in charge.

Q. Was she is assistant? A. No, she was not his assistant, she was a first grade clerk.

Q. The same grade that you have? A. That is right.

Q. What kind of work did you do in the months preceding your transfer? A. What kind of work I did?

Q. Yes. A. I did extending work, billing consumers, the actual reading of the meters on the ledger, transferring it onto the ledger, and sending out the bills and skipping. 3146

Q. What are skips? A. Those are skip readings, when a consumer is out, why you have a skip reading come in and then you re-bill them again.

Q. What else? A. Well, that was for about two weeks.

Q. Two weeks prior to your transfer? A. That's right.

Q. Yes. A. And for the remainder of that two weeks, I worked on that I.B.E.W.

S. M. 1228 3147

Q. You mean— A. Distributed cards.

Q. Was that before your transfer? A. Before I was transferred. I had gotten permission to do that, due to the fact that the E.R.P. was not out of existence at that time.

Q. Did you distribute I.B.E.W. cards all during the month of April? A. No.

Q. The month of April—most of the month of April? A. No, just for approximately two weeks.

Q. You did it two weeks preceding your transfer? A. Preceding, until the 8th of May I was transferred.

3148 *Eleanor Misbach—For N.L.R.B.—Direct*

Q. I see, and when did—when you did that work, did you get your regular pay? A. Yes, I did.

Q. How was your time indicated, as doing company business? A. Company business.

Q. Now, I show you a photostatic copy of your employment record for the month of April and May, 1937, up to the time when you were transferred, and ask you if you will look at it. A. Uh, huh.

Mr. Moscovitz: May I have it marked for
3149 identification?

S. M. 1229

(Document referred to was marked Board's Exhibit No. 17 for Identification, Witness Misbach.)

Q. (By Mr. Moscovitz) I show you Board's Exhibit No. 17 marked for Identification, and ask you if this is the employment record for you for the month of April and the month of May, 1937, up to the time you were transferred into Unit No. 2? A. Well, I have never seen one of these before, but that is the kind of work I
3150 do, I know that, skips and miscellaneous, and hours, company business. That's right, that's right, transferred to the unit system.

Q. And shows your transfer as of May 10th? A. Was it the 10th? I didn't know whether it was the 10th or the 8th. It must have been on a Monday.

Q. Yes. Now, you will notice that under the heading, "Miscellaneous"— A. Yes.

Q. There are indications of company business? A. Oh, yes, but that can be different, too.

Q. Now, when did the company business to which you refer start? A. Here—

Q. April 25th? A. It must have been that. That is a straight day.

S. M. 1230

Q. April 26th up until you were transferred? A. Yes.

Q. The last working day indicated on this list being May 7th, right? A. Right.

Q. All right.

Mr. Moscovitz: I offer this at this time, Mr. Examiner.

Judge Ransom: No objection.

Trial Examiner Gates: It may be admitted.

(Document previously marked Board's Exhibit 17 for Identification received in evidence, Witness Misbach.) 3152

Q. (By Mr. Moscovitz) Now, you testified that the period of time indicated was spent distributing I.B.E.W. cards? A. Yes.

Q. Now, before you distributed I.B.E.W. cards, were you a member of the employee representation plan? A. Yes, I was.

Q. Were you a member of any other labor organization? A. No.

Q. How long had you been a member of the plan? A. The last two years, 1934-'35. 3153

Q. Did you hold any official position? A. No, I was just secretary of our bureau council and on the welfare committee.

Judge Ransom: What committee?

The Witness: The welfare.

S. M. 1231

Q. (By Mr. Moscovitz) And at the time you started distributing these cards, were you still a member of the plan? A. Yes, I was.

Q. And were you at that time a member of the I.B.E.W.? A. Yes, I was.

Q. When did you become a member? A. Let's see—I guess I had been notified about a week later, maybe a couple of days. I don't remember now offhand. I was one of the original members, if that it what you mean, a charter member of our local.

Q. What is your local? A. 839.

Q. Where did you become a member? A. We had a meeting on a Saturday morning, let me see—oh, at a
3155 mass meeting, about 96 representatives, 80 to 96.

Q. Representatives of the plan? A. Of the plan.

Q. Where? A. Over in the meter reading building in Long Island City. That included everybody, Flushing and all, to decide about the plan.

Q. When was that? A. I think that must have been around the beginning of April.

S. M. 1232

Q. About the start of April? A. Yes.

Q. After you heard that Mr. Carlisle had recognized the I. B. E. W.? A. That is about it.

3156 Q. After the period when it appeared in the newspapers? A. That's right.

Q. Not before? A. No.

Q. All right. And from whom had you received word to attend? A. My bureau chairman.

Q. Who was that? A. Mr. Carey.

Q. Yes. And he is your what? A. Bureau council chairman.

Q. What is his job? A. In the company?

Q. Yes. A. Well, at present, now, he is temporary chairman of the I.B.E.W.

Q. The same local that you belong to? A. That's right.

Q. What was his job at the time he gave you word to attend this mass meeting. A. At that time he was chairman of the general council of the E.R.P.

S. M. 1233

Q. Yes. And did you secure permission from your supervisory employee to attend? A. This meeting?

Q. Yes. A. This meeting it was understood was just that E.R.P. was going out, we were still in existence at that time.

Q. So you did not have to get permission? A. That's 3158
right.

Q. It had been your practice whenever necessary to attend without permission, is that right? A. Oh, no, I always asked for permission of even the E.R.P. meeting, too.

Q. But this was one you did not ask that? A. No, I had been told I could go by our general chairman and that was good enough for me.

Q. That was good enough for you? A. Yes.

Q. How long were you at that meeting? A. Until about 11:30.

Q. When did it start? A. They started at nine 3159
o'clock.

Q. Was it time spent on company business, so-called? A. In this way it was, yes, it was for the welfare of the employees and everybody knew what they wanted to do.

Q. Now, before this, when you did employee repre-

S. M. 1234

sentation work, during the period of time that you were a member of it, was the time spent by you in that work listed on your record as company business? A. When I did that, yes.

Q. And that was time for which you were paid? Is that right? A. That's right.

3160 *Eleanor Misbach—For N.L.R.B.—Direct*

Q. And that practice continued during the period of time that you were doing I.B.E.W. work. Is that right? Until your transfer to Unit No. 2? A. That's right.

S. M. 1235

Q. All right now, I have here too, Miss Misbach, three other photostatic copies which give an account of your employment record for October and December, 1936, and February, 1937, I would ask you to look at the three of them and you will find there a miscellaneous heading
3161 with company business indications thereunder; will you tell me whether or not those indications are for time spent in your employee representation work and if these three copies aren't a good sample of the period of time spent in that work?

Judge Ransom: Well, I think, Mr. Moscovitz you will find that on those sheets there are other months than those you specified, I think that makes a continuous record from October.

Mr. Moscovitz: All right.

The Witness: I am confused on October, here, all this is not E.R.P. company business. I happened to have charge of the bowling too and that
3162 is when the season starts.

Mr. Moscovitz: Are you a bowler?

The Witness: A little bit, and I have got time off to go to various meetings for to organize it, that is an employees' association activity naturally, and October is just at the peak when we started, so you could not take that off the company's records. It is and it isn't.

Q. (By Mr. Moscovitz) Yes, and then again no. A. That goes all the way through until March so I guess

S. M. 1236

they are all classified as one. I have never seen any sheet like that before.

Mr. Moscovitz: I will offer these as one exhibit.

(Documents referred to were marked Board's Exhibit No. 18-a, 18-b, 18-c, received in evidence, Witness Misbach.)

Mr. Moscovitz: Did you stop circulating the I.B.E.W. cards after you were transferred into Unit No. 2? 3164

The Witness: Yes.

Q. (By Mr. Moscovitz) Upon transfer you ceased? A. I ceased.

Q. And was your circularization of these cards in the department in which you worked? A. That's right.

Q. You secured membership for the I.B.E.W.? A. That's right.

Q. And it was during the working hours of those employees? A. That's right.

Q. You went from person to person in an effort to secure membership? A. Yes. 3165

Q. Is that right? A. Yes.

Q. Did you also collect dues from these people? A. Yes, I collect dues.

Q. And was that during that same period of time? A. Same period of time.

S. M. 1237

Mr. Moscovitz: That's all.

CROSS EXAMINATION:

Q. (By Mr. Ransom) Your work in 1936 and 1937 at

3166 least was in the consumers' accounting? A. That's right.

Q. Prior to May 10th, your department of work, was that of the extending division? A. That's right.

Q. Does that work consist of taking the meter readings off the meter readers books and making out bills? A. That's right.

Q. Did that work include both reading and what are known as skip readings, regular readings and skip readings. A. It did.

3167 Q. You worked on both? A. That's right, on both.

Q. Now, this transfer that has been referred to as of May 10th of this year, did that involve any change in the nature of your work or was it only a change in the form of organization of the work? A. No. With this transfer we more or less went back to the old system in the unit, we followed the work all the way through instead of just doing extending, we sent out the bills and make up our vouchers, different routine altogether.

Q. Well, it was a general change in the department

S. M. 1238

3168 in the method of making out bills? A. That's right, the same thing.

Q. But you still were on consumers' accounting? A. Yes, still consumers' accounting.

Q. And the change was instead of your only doing the work of extending, you followed the bill transaction all the way through? A. That's right.

Q. When did you become secretary of your bureau council? A. 1935.

Q. And you were nominated and elected by employees in your bureau that year? A. That's right.

Q. Now, what bureau council was that? A. Consumers' accounting.

3169

Q. What department was it? A. Accounting department.

Q. That was in the accounting department? A. Yes.

Q. Were you a member of anything higher than the bureau council? A. I don't know—

Q. I mean were you a member of the department council? A. Oh, no.

Q. You were not a member of the general council? A. No, I wasn't.

S. M. 1239

3170

Q. In the course of your duties for the company and quite aside from the E.R.P., did you perform duties in respect of employees welfare work? A. I did.

Q. You refer to what was called an employees association; is that in any way identified with the E.R.P.? A. No, that is two independent organizations.

Q. That is, the employees association is not a collective bargaining agency? A. No.

Q. Does the employees association of the New York and Queens Electric Light and Power Company carry on various welfare and recreational activities for the employees? A. They do.

3171

Q. And is it in part supported by the employees through their contributions and in part by the company through its contribution. A. It is.

Q. And in the course of your regular work and course of duties with the company, did you have various assignments in connection with this welfare work? A. Yes, I did.

Q. I think you mentioned bowling as one of the chief of those activities in which you were engaged? A. That is right.

3172

Eleanor Misbach—For N.L.R.B.—Cross

S. M. 1240

Q. Well, did you in some way have charge of that? A. Yes, I had charge of it, I was chairlady of it.

Q. You were the head? A. Of bowling.

Q. You were the head of the committee in the association that had to do with bowling? A. That's right.

Q. And was this welfare work regarded as paid for by the company as part of your regular duties? A. Yes it was.

3173 Q. But these welfare activities of the employees association did they have anything to do with the E.R.P.? A. Yes, there was a committee of the E.R.P. that had a welfare committee.

Q. And you were chairman of that? A. No, I was on the board.

Q. You were on the board of the welfare? A. Yes.

Q. What does that committee do? A. Well, it took charge of medical cases and complaints and the likes of that, everything pertaining to the employees welfare.

Q. Well, was that— A. In other words I had charge of the hospitalization end of it.

3174 S. M. 1241

Q. Was that a committee that took up those matters with the management? A. Yes, that's right, general council referred it to us. We in turn contacted the employees.

Q. Now, was that welfare committee of which you are the head, was that a committee of the bureau or your department or of the company? A. The company at large.

Q. I mean, that was the collective bargaining agency, you may call it a matter of—well, it was a committee which dealt with management? A. That's right.

3175

Q. With respect to such matters of employee grievances as related to medical care, hospitalization and group insurance? A. That's right, pensions too.

Q. The whole welfare program of the company? A. Yes.

Q. And did the New York and Queens Electric Light and Power Company have a welfare program which included group insurance, pensions? A. Yes, I believe we did have one, yes, I know we had one, I have a copy of it.

Q. Also medical treatment? A. Yes.

3176

S. M. 1242

Q. And hospital care? A. Yes, I have that too.

Q. And the sanitarium at Green Lakes Farm? A. Yes, that's right, that is all in the one pamphlet.

Q. And with respect to all those welfare matters for employees you dealt with the management? A. That's right.

Q. And that was by reference of such matters to your committee or board from the general council elected by the employees? A. That's right.

Q. So that although you were not a member of the general council, you were chairman of the board or committee created by the general council of employees? A. I was not chairman but I was on a committee created.

3177

Q. On a committee, rather? A. Yes.

Q. You spoke of a Miss Helen Selden who had some duties of assigning or distributing work in your bureau, was that in the bureau as a whole or only in your department? A. Department.

Q. Your department? A. Yes.

Q. Do you know whether Miss Seldon was and is a member of the I.B.E.W.? A. No, I don't believe she is a member of the I.B.E.W.

Q. You spoke of another employee whose last name

S. M. 1243

I did not get, his first name was Vincent? A. Latronica.

Q. Do you know whether he was and is a member of the I.B.E.W.? A. He is a member of the I.B.E.W.

Trial Examiner Gates: Did you say he is or is not?

The Witness: He is a member.

Q. Do you fix the date more definitely of that meeting which you said was held at, I think, the meter repair
3179 shop, when the representatives of the E.R.P. of the Queens company were present? A. I believe the only way you could find it would be on my sheet there.

Q. What? A. You could find it, I believe, by looking up around April or so, when I had the time off in the morning.

Q. Do you know what day of the week it was? A. Monday morning.

Q. And referring to Board's exhibit— A. Yes, it must have been a Monday morning.

Q. Board's exhibit #17, can you fix the date of that? A. It was the 26th, right here, April 26th.

3180 Q. That is, you think— A. That is what I think it is.

Q. You fix the date as the 26th of April which you

S. M. 1244

stated would be a Monday morning? A. I believe so.

Q. And do you identify that meeting on Monday, the 26th, as this meeting at which were present the members of the various councils of New York and Queens Company? A. That's right.

Q. That would include not only those who had been elected to the general council but those who had been elected to department and bureau councils? A. Every one.

3181

Q. That would be about how many elected representatives of the employees? A. About 96, I should say.

Q. 96? A. I think so, there were quite a few there.

Q. Now, I ask you whether it was after that date that you began circulating I.B.E.W. membership cards? A. It was after that date.

Q. You fix it as after the 26th? A. After we had the Long Island mass meeting.

Q. And was your action in circulating the cards the result of the discussion which took place at that meeting? A. (No response.)

3182

Judge Ransom: Strike that out.

Q. (By Judge Ransom) Was this subject of whether or not the employees who had been on the various E.R.P.

S. M. 1245

councils should go into the I.B.E.W., was that subject discussed at this meeting? A. Yes that was.

Q. And was it the next day or the same day that you made up your mind that you would circulate these I.B.E.W.— A. That morning, right then and there, I made up my mind.

3183

Q. After the discussion? A. After the meeting.

Q. At this meeting? A. Yes.

Q. You made up your mind you would do what you could to get members for the I.B.E.W.? A. That's right.

Q. Now, had you made application for membership in the I.B.E.W. before or after—before or after this meeting of the 26th? A. Not before, after.

Q. You made application then after the 26th? A. Yes.

Q. And you fix that as the date? A. After the meeting.

Q. And having yourself made application for mem-

bership, you took the cards to see if you could get others to join? A. That's right.

Q. Now, I notice in the columns of these other statements which were put in by Mr. Moscovitz from your

S. M. 1246

work records, various entries in which portions of indicated days are shown as having been devoted to matters which were described as medical company business, sometimes merely medical, and sometimes company busi-
3185 ness. What were those activities? A. Well, medical was, I had a treatment for my arm.

Q. Those were personal matters of your own? A. Personal, sure, all medical meetings were personal.

Q. The instances when medical is shown or where "excused" is shown— A. I believe "excused" must be the bowling activities. I believe the word "excused" next to that must mean bowling. I don't know. I have never seen any of these sheets before.

Q. Would company activities or company business, under "miscellaneous"—do you know—down to the 26th of April, 1937, would that denote such time as you
3186 devoted to this welfare work or the E.R.P.? A. The E.R.P., that's right.

Q. And you are sure that this medical is only personal? A. That's right.

Q. That's all.

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Miss Misbach, in response to a question put to you by Judge Ransom, you testified that after this particular meeting, mass meeting, you made up your mind that you would distribute I.B.E.W.

S. M. 1247

cards? A. Yes.

Q. Is that right? A. That's right.

Q. Now, after you made up your mind in that regard, whom did you advise? A. Whom did I advise?

Q. Yes. A. What do you mean.

Q. Did you tell anyone about having made up your mind? A. Why, I became a charter member of the I.B.E.W.

Q. Yes, and did you report to anyone in the company? A. To my chairman. 3188

Q. Yes, and did you report to anyone in the company that you had made up your mind to distribute cards? A. I reported to my chairman and told him I had decided I would sign up.

Q. With the I.B.E.W.? A. With the I.B.E.W.

Q. But after you had made up your mind to distribute these cards, to whom did you report? A. To my chairman.

Q. And you told him that you had made up your mind to distribute these cards? A. Yes.

S. M. 1248 3189

Q. Did you report to anyone else? A. No, sir, to my chairman. He took care of everything.

Q. I see. Did he take care for you of the question of your getting paid by the company for the distribution of these cards? A. That was explained—

Judge Ransom: There is no testimony that she got paid for the distribution of cards. I am sure you didn't mean to ask that question.

Mr. Moscovitz: That is what I meant.

Trial Examiner Gates: The question may be put as to time.

3190

Judge Ransom: There is no objection to the question whether she was paid for the time.

Q. (By Mr. Moscovitz) Did you get paid for that time? A. Yes.

Q. By the company? A. Yes.

Q. Who took care of the necessary arrangements for you to get paid? A. I don't know, I just got paid.

Q. Did the chairman take care of that? A. It was explained that the E.R.P. was still in existence and we were allowed to devote some time to the I.B.E.W.

3191

Q. Who explained that? A. My chairman, Pat Carey.

S. M. 1249

Q. And Pat Cary was doing the same thing? A. I couldn't vouch for that. I know I was.

(Witness excused.)

Mr. Moscovitz: I would like at this time, Mr. Examiner, to offer a foreman's daily report and attached work order, the foreman's daily report being number—the work order number on the foreman's daily report, rather, being No. 2300R

3192

and attached there to being the work order on the particular work. I offer it at this time.

Trial Examiner Gates: What is the purpose of the offer?

Mr. Moscovitz: Well, you will notice that the foreman's daily report of May 12, 1937 shows that A. Martini was engaged on that day in E.R.P. work for which he was paid, and it has been the testimony of Mr. Spalding, I think, that Mr. Martini on that day was engaged in distribution of the I.B.E.W. cards and the collection of dues.

Judge Ransom: No objection.

Trial Examiner Gates: There being no objection, it is admitted.

3193

(Document referred to marked Boards' exhibit #19 for identification, received in evidence, Witness Misbach.)

HARRY N. CROWELL, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

3194

S. M. 1250

Q. (By Mr. Moscovitz) Where do you live? A. 4317 Bowne Street, Flushing.

Q. By whom are you employed? A. Pardon me?

Q. By whom are you employed? A. Consolidated Edison.

Judge Ransom: Will you speak up a little, Mr. Crowell, I would love to hear this testimony.

The Witness: I work with the Consolidated Edison, 15th Street.

3195

Q. (By Mr. Moscovitz) How long have you been with the Consolidated Edison at 15th Street? A. 7 years, in September.

Q. Is that the entire length of service with the company? A. That is right, well, I haven't spent all that time at 15th Street, though. The last three or four years I have been there.

Q. I see. What kind of work do you do? A. Bookkeeping.

Q. Who is your immediate supervisor or superior? A. Mr. McGinn.

Q. What is his first name? A. Al.

Q. Al? Yes.

S. M. 1251

Q. What do you call him, what's his title? A. He is, I think, clerk in charge.

Q. Who is the person above him? A. Harry Lipps, he is the supervisor.

Q. Who is above him? A. R. J. Phillips.

Q. What's his title? A. He is the manager.

Q. And what is the name of the department you work in? A. Commercial relations.

Q. Any particular division? A. Well, it used to be the cash posting division, I guess it still is that.

Q. Were you a member of the E.R.P.? A. Yes.

Q. Are you still? A. I still hold my card but they tell me it is gone.

Q. Who told you? A. Well, the general impression around the building is there is no more E.R.P. or "A".

Q. Are you a member of any other labor organization? A. Independent Gas and Electric Union.

Q. Independent Gas and Electric Union? A. And Electric Union.

Q. How long have you belonged to that organization?

S. M. 1252

A. Well, since it started out about the 27th of April.

Q. 1937? A. That's right.

Q. Do you hold any office with it? A. I am a vice chairman of that.

Q. And before you became a member of that organization do you recall whether or not organizational work was going on in your department of the I.B.E.W.? A. Yes, it was, that was really one of the reasons why we started an independent union. You see, the employees, in general, the general opinion around there was that they did not want to be pushed into anything.

3199

Judge Ransom: I move to strike out all the answer except "yes". It is purely argumentative and self-serving.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

The Witness: Well, Mr. O'Brien and I started the independent Union for the simple reason that the general run of employees by a vast majority did not want to sign with the I.B.E.W. and they made no bones about it. Quite a few of them did sign for the simple reason they felt that was the 3200
safest thing to do, if not the best thing.

Judge Ransom: I move to strike out the whole volunteered argument of the witness as not responsive to the question.

Trial Examiner Gates: It may be stricken.

S. M. 1253

Q. (By Mr. Moscovitz) When was it that you saw this I.B.E.W. activity to which you refer? A. That was shortly after, I think it was the 22nd of April that it really began.

Q. Where was it? A. Well, I worked on the 10th 3201
floor of the Irving Place office and I think the first activities started with some of the clerks in March.

Q. Who was that? A. Well, a Mr. O'Callahan was really the ring leader of it.

Q. Is he a clerk in charge of the meter index division? A. That's right.

Q. Yes? A. And he got one of his men to give the speeches, Mr. Anello, James Anello.

Q. Well, who did he call into the meeting? A. Well, he started off with unit 1, 2 and 3, and they had them in there one day.

3202 Q. Are they girls or men? A. Well, they are both.
Q. Yes? A. Those particular units.
Q. Do all in one day? A. Oh, no, that went on for

S. M. 1254

several days, but that was really the beginning.
Q. Well, now, tell us about it. A. I guess they figured they would go right straight through to unit 27, but they did not get past three.
Q. Well, tell us about the start of it and what took
3203 place. A. Well, Mr. O'Callahan apparently dropped all his regular duties there and spread the word around that Mr. Anello was giving these lectures in the meter readers' room, that's on the 10th floor—

Judge Ransom: I move to strike out the witness' argument about appearances, let him state what was said and what was done.

Trial Examiner Gates: The record will stand but I will ask that you do say what was said and what was done and not elaborate.

The Witness: Well, I can't state what was said.

3204 Q. (By Mr. Moscovitz) Well, tell me this, Mr. Crowell, Mr. O'Callahan is a clerk in charge, he has many,—how many employees working under him? A. Well, I think at the time he had around 140, meter readers.
Q. Now, all right. And do you know whether or not any of the employees under his supervision were called in to a meeting where they were asked to become members of the I.B.E.W.? A. Yes.

S. M. 1255

Q. Do you know when it was? A. I don't know the

date but it was in the vicinity of the 2nd of May, the meter readers were there.

Q. And is that the first evidence of that kind of activity that was brought to your attention? A. Oh, no.

Q. All right. Tell us then when it was first brought to your attention? A. When it was first brought to my attention was by the girls on the billing machine, they all disappeared and walked in, they were marched in there by their supervisor.

Q. Who was that? A. Miss Conklin.

Q. Yes. How many girls were there? A. I think 3206
there were 35 girls and they were in the meter readers' room for over an hour.

Q. And who were the supervisors or superiors with them? A. Well, Mr. Conklin took them in and Mr. Anello made the speech.

Q. Who is Mr. Anello? A. Why, he is the meter reader.

Q. And was he a member of the E.R.P.? A. Yes.

Q. What job did he hold? A. I think he was one of the bureau councilmen I think, I am not positive.

S. M. 1256

3207

Q. In an official capacity? A. Yes.

Q. Did he belong in your department? A. Yes.

Q. As an employee? A. In the department, yes.

Q. Yes, and this was done during working hours, wasn't it? A. Yes.

Q. Indicate yes or no, without shaking your head. A. All right, I am sorry.

Q. This was done during working hours? A. Yes, it was.

Q. Do you know what took place in this meeting? A. Well, I was not invited to come in to any of the meetings, I was in there alone once with Mr. Anello but the general idea was that you had better sign up now.

Judge Ransom: I move to strike out the witness' conclusion and what the general idea was to something he did not attend.

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) But did you have a talk with Mr. O'Callahan about the meetings he was conducting with Mr. Anello? A. No, I did not speak to Mr. O'Callahan about that.

S. M. 1257

3209 Q. Who did you speak to about it? A. Mr. Wisckowski.

Q. Who is he? A. I believe he is a supervisor, no, Walter Considine, he was the supervisor I spoke to.

Judge Ransom: What was the name?

The Witness: Considine, that is Walter.

Q. (By Mr. Moscovitz) Where is a supervisor—

Judge Ransom: Will you speak up. I hope there is nothing confidential about this testimony, I would like to hear it.

3210 The Witness: He is the supervisor on the 10th floor also.

Q. (By Mr. Moscovitz) Does he hold the same kind of a job that Mr. O'Callahan does? A. Yes.

Q. Go ahead. A. He is the supervisor in charge of the different units. Now, I don't recall—we were in the stages of shifting around from another old system to a new system. I don't know just what his location, title or anything is at the present stage.

Q. When did you speak with him? A. I spoke with him about the 2nd of May.

Q. All right. About these meetings? A. About allowing the men to go around the floor.

S. M. 1258

Q. You were referring to Mr. Anello? A. No, I am referring to Mr. McGray.

Judge Ransom: What's that name?
The Witness: McGray.

Q. (By Mr. Moscovitz) Before we get to Mr. Considine and his reference to Mr. McGray, will you tell me, will you tell me whether or not you knew what happened when the girls were called into the meeting with Mr. Anello? A. Well, all I know is what they have told me. 3212

Q. All right, now, who told you? A. Different girls. If you want their names, I could furnish you with them later.

Q. Do you happen to know off hand, one of them? A. I do not want to be called.

Q. All right, then, you were referring to the girls in the department that were called in, the first time? A. That's right.

Q. And you say there were some 30 or 35 in number? A. That's right.

Q. Now, what did they report to you? A. Reported to me that they were given a pretty stiff talk, a good sales talk as to why they should join the I.B.E.W. and very few of them joined at that time and they were called in again, I think it was the next day, and they were given the same talk for at least an hour, and when they started asking questions, they were rather em- 3213

S. M. 1259

barrassing as to the virtues of the I.B.E.W., they were more or less beaten down, not answered in a straightforward way. The idea was to get them in there and Buffalo them into signing.

3214

Judge Ransom: I move to strike out the witness' argument as purely a characterization of something that is pure hearsay. I submit that no board of this character has a right to let such remote hearsay in, it is mere argument of a self-serving character, and it should not remain in the record.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

3215 Q. (By Mr. Moscovitz) Now, tell me this, Mr. Crowell?

Examiner Gates: I wish the witness would stick to the facts as reported to him, however, unless he knows those are the facts.

The Witness: Those are the facts.

Trial Examiner Gates: Stick to the conversation.

Q. (By Mr. Moscovitz) Now, just what—I will withdraw that. After these meetings that you were telling me about, did you have a conversation with this Mr. Considine that you have already referred to? A. Yes, I did.

3216 Q. Do you recall when that was? A. That was either May 2nd or May 3rd.

Q. And was it at that time that you spoke with him

S. M. 1260

about Mr. McGray? A. That's right.

Q. And who is Mr. McGray? A. He is just a clerk down there who is also, I think he was president of the bureau council under the E.R.A.

Q. And what was he doing, that you reported him about? A. Well, he was going around trying to sign the people up and collect money.

Q. For what? A. The I.B.E.W., and I have known Mr. McGray for some years, we have been more or less friends and I have asked him three different times to please stop or I would have to put a charge in and it was more or less a gentlemanly way of doing things and Mr. McGray point blank refused to do it, so I spoke to his supervisor, Mr. Considine, and he said it was none of my damned business and that he would run his place as he saw fit and permit Mr. McGray to do anything he felt like, so that was that.

Shortly after that I spoke to Mr. Considine's boss, 3218
Mr. Phillips and Mr. Phillips did stop it.

Q. When was it that it was stopped by Mr. Phillips? A. That was around the 5th or 6th of the month.

Q. Of May? A. Yes.

S. M. 1261

Q. 1937? A. Yes.

Q. And during this period of time was Mr. Ganley around? A. Mr. Ganley was on the 12th floor, I bumped into him one day up there at lunch time with Mr. O'Brien, I think it is room 1237 and he was in there with several other people who I don't know. 3219

Q. What is room 1237? A. I think that is the council room up there where they have the offices of the company union.

Q. The E.R.A.? A. Yes.

Q. When was that that you bumped into him? A. That was a week—around the 5th.

Q. Of May? A. Yes.

Q. And what was Mr. Ganley doing? A. Well, he was directing orders around the company and he called up headquarters, I believe it was that, but the idea, he could not understand how we should get our petitions going on the Independent Union, he said they had gone

3220 all over the damned place but he didn't know how they got in but he was doing I.B.E.W. work.

Q. Was he working for the company or on leave of absence? A. I don't think he was on leave yet.

S. M. 1262

Q. Not on leave yet? A. Not that I know of.

Q. Do you know when he went on leave? A. No.

Q. He was awfully busy, though, wasn't he? A. Very, very busy.

3221 Q. And was that on I.B.E.W. work at that time? A. Yes.

Mr. Moscovitz: That's all, Mr. Crowell.

CROSS EXAMINATION:

Q. (By Mr. Ransom) I am not sure that I got the names right in your answers to Mr. Moscovitz, you spoke of the bookkeeper by the name of McGinn? A. He is my boss.

Q. Yes. He is a clerk in the cash posting division? A. He is the clerk in charge.

3222 Q. The clerk in charge? A. Yes.

Q. Do you know whether he is a member of the I.B.E.W.? A. No, I don't.

Q. Now, Mr. Harry Bliss, do you know whether he is a member? A. Who?

Q. Bliss? A. You mean Lipps.

Q. Oh, Lipps? A. Yes.

S. M. 1263

Q. Do you know whether he is a member or not? A. I haven't any idea, I don't think he is eligible.

Q. But you don't know whether he is a member or not? A. No.

Q. Don't shake your head? A. I don't know.

Q. That is even more inaudible than your answers; Mr. O'Callahan, what's his work? A. He is the boss of the meter indexers.

Q. Well, what's his title? A. Well, I don't know whether it is clerk in charge or supervisor or what it is, one or the other.

Q. And is he a member of the I.B.E.W.? A. I haven't any idea.

Q. Mr. Anello, is that, that you spoke about? A. Yes, James Anello. 3224

Q. He is a meter reader? A. That's right.

Q. Is he a member of the I.B.E.W.? A. Yes, he is.

Q. Mr. McGray, he is a member of the I.B.E.W.? A. Yes, he is.

Q. And do you know whether Mr. Considine is or not? A. I don't think he is eligible.

Q. Well, do you know whether he is a member or

not? A. No, I don't know.

Q. You spoke about a Miss somebody—I didn't get the name at all. A. Conklin. 3225

Q. What? A. Conklin, I think it is.

Q. What's her position? A. She is a supervisor.

Q. Is she a member of the I.B.E.W.? A. No.

Q. What? A. Not that I know.

Q. But you don't know? A. No.

Q. You have testified concerning a meeting about May 2nd in the meter readers' room at which Mr. Anello made a sales talk for the I.B.E.W., what time of day was that? A. I think the first talk was about in the vicinity of 10.30 or eleven in the morning and the next day it was in the afternoon.

Q. At the time the meter readers were there, it wasn't

after they had finished their trips? A. Yes, they were back in the building, I don't know whether that is after hours or what, I don't know the hours of the meter readers.

S. M. 1265

Q. Well, wasn't it the fact that it was four o'clock after, after their day was over? A. If their day is over at four, it was after that, yes.

Q. In any event, it was after four? A. That's right.

3227

Mr. Ransom: That's all.

Mr. Moscovitz: That's all.

(Witness excused.)

Trial Examiner Gates: We will take a recess for five minutes.

(Whereupon a five minute recess was taken.)

After Recess

EDWARD SHEDLOCK, was called as a witness for
3228 the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. Shedlock? A. 1422 116th Street, College Point, Long Island.

Q. By whom are you employed? A. The New York and Queens Electric Light and Power Company.

Q. How long have you been employed there? A. Since December 22, 1929.

Q. What work did you do? A. I do the work of a general tester, an assistant in the engineering department, test bureau, field test division.

Edward Shedlock—For N.L.R.B.—Direct 3229

S. M. 1266

Q. Are you a member of the Independent Gas Workers organization? A. Yes.

Q. Do you hold any official position? A. I am a member of the executive committee and of the organization committee.

Q. How long have you been a member? A. Since November 15, and member of the union since April 29th.

Q. Were you a member of the E.R.P. before? A. Yes.

3230

Q. You were advised of the fact that Mr. Carlisle made an announcement on April 22nd, 1937, that he had recognized the I.B.E.W.? A. Yes.

Q. Did you, after that notice, notice any organizational activity being carried on in your department for the I.B.E.W.? A. Yes.

Q. Do you recall what it was? A. It was within three days after the 20th of April.

Q. And by whom was it carried out? A. A particular party, Mr. Frank Riley.

Q. Who is he? A. He is a meter tester in the meter department of the same company.

3231

S. M. 1267

Q. Was he a member of the E.R.P.? A. Yes.

Q. And in what capacity? A. Yes.

Q. In what capacity? A. Departmental representative to the general council for what was formerly the meter and test department.

Q. What was he doing? A. He was distributing cards, I.B.E.W. obligation cards, to the various members.

Q. During working hours? A. Yes.

Q. Do you know whether or not he is now an officer

3232 of the I.B.E.W.? A. He is not an officer. However, he is a member of the I.B.E.W.

Q. And anyone else? A. Mr. Willis.

Q. Who was Mr. Willis? A. He is from the sales office, the Jamaica office, of the New York and Queens Electric Light and Power Company.

Q. Where did you see him? A. I didn't see him. Mr. Bernard, who is in the same company, certified to that fact for me.

Q. Oh, he told you about it? A. Yes.

3233

S. M. 1268

Q. Well, was there anyone else that you saw? A. Mr. Stritzel, John Stritzel, of the service bureau of the Queens Company.

Q. When was it that you saw him? A. During the period I might say within the first week or ten days after the accorded recognition to the I.B.E.W.

Q. Where did you see him? A. At 4022 Lawrence Street, the central service building, Flushing.

Q. What was he doing? A. He was also distributing cards to the various members of the service bureau.

3234 Q. And do you know Mr. Riley? A. Yes.

Q. And what is his first name? A. Frank Riley.

Q. Was he distributing cards? A. Yes.

Q. Did you see him? A. Yes.

Q. Within the same time? A. He was the man I just told you about, the first man, Mr. Frank Riley.

Q. Do you know who the superintendent was there,

S. M. 1269

who is his superintendent? A. His superintendent is Mr. W. F. Kennedy.

Q. Was he a superintendent then? A. Yes.

Q. Do you know whether or not Mr. Riley was cir-

culating these cards at Mr. Kennedy's request? A. I do not know. 3235

Judge Ransom: Objected to—never mind, he said no.

Q. All right. A. I recall a statement made to me by Mr. Riley. I was particularly interested in this case because he wanted to become a member of the Independent Gas and Electric Union.

Judge Ransom: I move to strike out the witness' volunteered statement as to his interest or lack of interest. 3236

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. When I questioned Mr. Riley as to why he was again distributing cards, he made this statement to me, that he and Mr. P. J. Carey, Mr. P. J. Carey, was formerly general councilman of the Queens E.R.P.—

Mr. Moscovitz: What is he now?

The Witness: He is now, as far as I know, the temporary international representative of local 829, the I.B.E.W. union in Queens. He told me that at a meeting when he asked for the cooperation of the members of the general council to solicit membership in the I.B.E.W. that he 3237

was accused in the past of not cooperating with Mr. Carey very successfully. He said that at that meeting he told Mr. Carey he didn't want to have anything to do with the I.B.E.W.

Q. Who told Mr. Carey? A. Mr. Riley did. It resulted in a sort of slightly personal disagreement be-

3238 tween the two men and Mr. Riley ceased I.B.E.W. activities. However, Mr. Riley made the statement to me also—

Q. When was that statement made? A. About the 11th, the 10th or 11th of May.

Q. Yes. A. He stated that the reason he was back again doing I.B.E.W. work was because he knows definitely that Mr. Carey spoke to Mr. L. A. Coleman concerning him.

Q. Mr. L. A. Coleman? A. Mr. L. A. Coleman.

3239 Q. Who is he? A. Executive vice president of the New York and Queens—

Judge Ransom: I object to that as purely hearsay, three or four degrees removed and not admissible here under any rules of evidence.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

The Witness: So Mr. Coleman in turn talked to Mr. Kennedy as superintendent and the result

S. M. 1271

3240 of it was that Reilley was back soliciting membership and collecting dues in the I.B.E.W.

Q. (By Mr. Moscovitz) You saw him doing that, did you see any collection of dues at any time? A. No money was transferred.

Q. Did you see any notices on any bulletins, any bulletin boards, regarding the collection of dues? A. Yes, sir, I saw a notice on the bulletin board in the service bureau, Chateau Room, 4022 Lawrence Street.

Q. What did it have to say? A. Do you want it word for word?

Q. Did you copy it down? A. Yes.

Q. What was the date you saw it? A. I have it recorded as May 12th, that appeared on the blackboard of the premises of the New York and Queens Electric Light and Power Company, 4022 Lawrence Street.

Q. Written down? A. Written down in crayon on the blackboard, yes, sir, it is a blackboard that is used, the Chateau Room is used as a locker room from the men in the service bureau when they are out on duty for the company. They wear a uniform and they use that room as a locker room, it is referred to as the Chateau Room, and on this blackboard they use it for probably 3242
posting, important announcements of one sort or an-

S. M. 1272

other as to various activities.

Q. How long have you known this blackboard? A. Well, it has been there, I could not give the exact time it has been there. I noticed the same announcement as early as May 5.

Q. Well, what kind of an announcement had appeared on the blackboard during your employment in the company, as you have seen the blackboard from time to time? A. Well, such things pertaining to possibly an 3243
activity of soft ball or basket ball or hand ball, any activity of a general nature.

Q. Can any employee take a piece of crayon and write on the blackboard whatever he wants? A. They

S. M. 1273

could, but it wasn't the usual procedure.

Q. What was the usual procedure? A. The usual procedure was a representative of a particular association, for instance, if it was the manager of some ball team, why he could go over there and write up a notice that there would be a base ball game, or anything and

3244 sign his name to it. They were usually signed. Whoever put them up there would sign their name to it.

Q. Yes, and was this notice signed? A. Yes.

Q. By whom? A. Mr. J. Stritzel.

Q. Is he the person to whom you have already referred? A. Yes.

Q. What is his title? A. I don't know his company classification. All I know is that he is in the service bureau. He is one of the employees, I don't think he is in a supervisory capacity.

3245 Q. What was it that you saw on the bulletin board, a reference to the time when dues would be collected? A. Yes, it stated that all members who did not pay their admission fee and local 839 dues, $1.15, by May 15th, 1937, will not be eligible for vote in the general election of officers, and so forth, January, 1937.

S. M. 1274

Q. When was it that you saw the collection of dues? A. I did not see the actual collection of dues, the money transferred.

Q. What did you see? A. Various employees asking
3246 information about the independent unions stated that they had paid dues to both Mr. Reilly and Mr. Stritzel.

Q. Well, did you ever speak with any one in a supervisory capacity regarding the recognition of the I.B.E.W. by the company? A. Not directly.

Q. When you say not directly, what do you mean? A. I refer to the morning following the announcement that Mr. Carlisle had recognized the I.B.E.W., Mr. Coster who was in the laboratory at the Queens Company, we were told to go up to the laboratory to a meeting, that was about, shortly after 8:30 in the morning, May, he read to us the article that had appeared in the newspapers. I don't know which newspaper it was, whether it was a

lengthy item about the recognition accorded to the I.B.E.W.

Q. Were you there when he read it? A. Yes, sir.

Q. And what did he say about it?

Mr. Ransom: I object to that as in no way binding upon the respondents or included in any issues here.

S.M. 1275

Trial Examiner Gates: He may answer.

Judge Ransom: Exception. 3248

The Witness: Mr. Coster himself did not say anything directly since I was still considered as a representative on the employees representation plan, having received no official word that it had been disbanded. I asked the question as to whether or not the company was violating the Wagner Act under that particular assignment of recognizing a union without giving the employees a chance to vote as to their unit for collective bargaining. Mr. Coster did not care to make any statement on that, he merely read the newspaper article and that was all there was to it. He did 3249
not care to volunteer any information whatsoever. We were allowed to draw our own conclusions from that newspaper article.

Q. What was his title? A. He was the foreman of a laboratory under the consolidation changes, I don't know where, whether his title had been changed.

Mr. Moscovitz: That's all.

CROSS EXAMINATION:

Q. (By Judge Ransom) What is the work of this test bureau? A. The test bureau takes care of all vari-

3250 *Edward Shedlock—For N.L.R.B.—Cross*

ous types of testing both company equipment and consumers' equipment, motor road tests, indicating voltage,

S. M. 1276

load, readings, all kinds of investigation of high bills, radio complaints and so on.

Q. Well, you made those tests on either consumers' premises or company premises? A. That's right, yes, sir.

3251 Q. Then your testing is of equipment which is in service? A. That's right, equipment in service or equipment about to be put into service.

Q. Referring to Riley, whom you spoke of as the meter tester who had distributed I.B.E.W. cards, do you know whether he is a member of the I.B.E.W.? A. He is a member, to my knowledge.

Q. So far as the activities of Mr. Willis, who is in the sales office of the company in Jamaica, as to that you know only what Mr. Bernard told you? A. That's right, yes, sir.

Q. Do you know whether Mr. Willis was or is a member of the I.B.E.W.? A. I don't know.

3252 Q. But you have no knowledge of it in a personal way at all? A. No, sir.

Q. Mr. Stritzel, what is his position in the service bureau? A. I don't know his official classification in the service bureau, I don't know whether he is classified as

S. M. 1277

a lineman or not, the work of the service bureau is various classes, I don't know whether he goes out on what they call "nolight complaints," or whether he goes out on line troubles or just what his particular nature of work might be, however, I don't believe it is in a supervisory capacity.

S. M. 1278

Q. Do you know whether he is a member of the I.B.E.W.? A. He is a member of the I.B.E.W.

Q. Do you know whether he is one of the temporary officers pending the election? A. No, sir, they had a nomination yesterday.

Q. You don't know whether up to this time he has been a temporary officer or not? A. No, sir.

Q. And Mr. Coster? A. Mr. Coster?

Q. Do you know whether or not he is a member? A. 3254
He, I understand, is not eligible for membership.

Q. This blackboard that you spoke of in the chateau room,—that isn't under any glass cover, or is that in any way locked, is it? A. No, sir, it is exposed.

Q. Did you identify this notice on the blackboard in some way that Mr. Tritzel had placed on there? A. Yes.

Q. Was it signed by him, or by his name? A. Signed by Mr. Tritzel.

Q. This conference at which Mr. Coster read the article to several of you in the laboratory, you say was held somewhere between 8:30 and 9? A. Yes, if I remem-

S. M. 1279 3255

ber, that was the time. We report for duty at 8:30 and it was shortly after that that we were told go to upstairs.

Q. What has been your relation to the E.R.P.? A. I was representative of the test bureau.

Q. In the department council? A. At that time it was the meter and test department. I was merely a representative of the test bureau of that combined department.

Q. In the department council or the general council? A. No council at all, just a representative from the bureau. Mr. Riley was the chairman of that particular council, department council.

3256 *Philemon Ewing—For N.L.R.B.—Direct*

Q. Well, did that give you membership in the department council? A. We could meet with the chairman, but on the department council. The departmental council really was us fellows automatically,—Mr. Riley was the chairman.

Judge Ransom: That's all.

EXAMINATION BY THE TRIAL EXAMINER:

Q. (By Trial Examiner Gates) Did Mr. Riley tell
3257 you that Mr. Kennedy spoke to him or not? A. Yes.

Q. Did he say what Mr. Kennedy said to him? A. No, sir.

Trial Examiner Gates: That's all.

(Witness excused.)

S. M. 1280

PHILEMON EWING, called as a witness for the National Labor Relations Board, being first duly sworn,
3258 testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. 208 East 32nd St.

Q. New York City? A. Right.

Q. Were you formerly employed by the Consolidated Edison Company? A. That's right. It was the Consolidated Gas Company then.

Q. When were you last employed by that company? A. January 17, 1936, last year.

Q. Immediately before the merger with the Consolidated Edison? A. Well, I don't know whether that was

immediately before or not. I couldn't say off-hand. It was January of last year.

Q. Of 1936? A. That's right.

Q. At the time you were last employed, what department were you working in? A. Mechanical department.

Q. Were you a member of any labor organization? A. Yes, I was a member of the Brotherhood of Utility

S. M. 1281

Employees at the time I was fired. I was secretary of the Equity Local at that time, that was the Manhattan 3260
Local, and I was also a member of the company union.

Q. That is the E.R.P.? A. The E.R.P.

Q. How long did you work for the company? A. About five, not quite five and a half years. The day after election day in 1930, that is the beginning of November, 1930, I started.

Q. What kind of work had you done when you first went to work? A. Testing gas and analyzing.

Q. What did you get? A. Well, I started at 20.

Q. How long did you work at 20? A. Until the following June, then they raised me to $22.50.

Q. Same kind of work? A. Same kind of work. 3261

Judge Ransom: I object to this unless its object is stated. I don't see that it is in any issue here. There is no charge and there is no complaint which relates to Mr. Ewing. We have had numerous amendments to the complaint, and no amendment as to Mr. Ewing.

Trial Examiner Gates: Well, he is entitled to testify the same way as the other witnesses.

S. M. 1282

Judge Ransom: Well, I object to this line of testimony as wholly immaterial to any issue in the case.

3262 *Philemon Ewing—For N.L.R.B.—Direct*

Trial Examiner Gates: The reporter may read the question.

(Question read.)

Trial Examiner Gates: He may testify.

Q. (By Mr. Moscovitz) Did you secure a raise thereafter? A. Yes. Let's see—what year was it—1934, I got a five-dollar raise.

Q. Which brought your salary up to what? A. That brought my salary rating up to $27.50, I guess what you
3263 call, but there was a cut off that.

Q. Was that the same kind of work? A. The same kind of work.

Q. Did you get a cut after your increase? A. No, there had been a general cut of 8 per cent and then half of that had been restored.

Q. Did you get a raise after that again? A. No.

Q. When you were last employed, was that the amount of money you were making? A. $27.50 minus 4-1/6 general—

Q. Did you get any part of that general cut back? A. Yes, the company restored—I don't remember just
3264 when—half of it—it must have been some time in 1934,

in the Spring of 1934, they restored half of the 8-1/3 per cent original cut.

Q. And what was the date of your last employment with the company? A. January 17, 1936.

Q. Now, at the time, were you doing the same kind of work you were doing when first employed? A. That's right.

Q. Had there been any additional responsibilities or additional work? A. Well, for a period there had been.

Q. What period? A. That was the period starting February 14, 1935, the work—

Q. Ending when? A. I couldn't say. The last time it lasted for a couple of weeks and it stopped there. I made numerous complaints that they were working me all of a sudden too hard and I kept a time record of how long it took me to do things, and pretty soon they stopped it after a week or two.

Q. When did that start? A. February 14th, that is the best of my recollection. The reason I remember it is because— 3266

Q. 1935? A. Yes, 1935.

S. M. 1284

Q. What was this added work you were doing? A. Well, I had been doing morning and afternoon tests at a station in Long Island City, and one in Flushing, and then they all of a sudden added on the afternoon tests at the 79th St. station as well, and expected me to get that all done in a normal day, which, of course, I wasn't able to do.

Q. You protested that and it was changed? A. Yes, after awhile, though. 3267

Q. After what period of time, for two weeks? A. I couldn't say off-hand, approximately two weeks, I would say.

Q. And did you, during the period of time through which you were employed, have any special work to do in addition to your regular work? A. Well, there was—for some time when I was stationed at Long Island, at Elizabeth St. station, there was a little extra work that went to that station.

Q. How many men in your department doing the same kind of work that you were doing? A. Doing the same kind of work as me?

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Q. Yes. A. I couldn't say off-hand, approximately eight, but some of them had a little more complicated work than I did.

Q. Just exactly what was the work you were doing? A. Well, I tested gas for heating value, analyzed the gas,

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made gravity tests and things like that, and tested and analyzed for sulphur and ammonia content, things of that sort.

3269 Q. These other men that you said worked in your same department, had they been employed for a longer period of time than you?

Judge Ransom: Objected to as immaterial, not within any issue of the case here.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. Some, yes, and some no.

Q. Well, which ones had been employed for a shorter period of time? A. The names, you mean?

Q. If you can give them. A. Well, there was one

3270 named William Traskis, but he had been transferred out of that up to Hunt's Point.

Q. When? A. Perhaps 1934.

Q. O' before you were last employed? A. Yes.

Q. The time you were last employed, how many men were working in your department, you have testified eight, is that right? A. Well, I did not count as the de-

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partment, there was a group of men under Will Mekoskey, that was my immediate boss, there was approximately, there were eight.

Q. Eight? A. Yes.

Q. Now, of that eight, were there any who had been working for a lesser period of time than you were with the company, if you know? A. I can't think of any offhand, I don't believe so.

Q. Do you know what their seniority was? A. Most of them by several years and one of them by a couple of months.

Q. You mean in terms of longer service than you? A. Than me, yes.

Q. All right, and during the period of time that you were employed with these other men, had you been disci- 3272
plined by your foreman or supervisor?

Judge Ransom: I object to that as irrelevant, incompetent and immaterial.

Trial Examiner Gates: He may answer.

The Witness: Discipline?

Q. (By Mr. Moscovitz) For improper work? A. Not that I can remember.

Q. Had you been commended by him for the work which you had been doing? A. Well, that was the basis

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3273

upon which my last five-dollar raise was given, also my previous $2.50 raise.

Q. Well, tell us about that. A. Well, the last one, it was shortly after the E.R.P. had been started, our representative was supposed to take up the question of a general increase, because the men in the department, about half of them were very much dissatisfied with the pay that they were getting and it was supposed to be on a basis of a blanket increase, referring to the kind of work they were doing, but it was actually put through as individual raises and the men that were doing the same work as I was at the time, that it was either the

3274 end of June, the end of June, I believe, 1934, they were getting the same pay, most of them $20, $22.50, with the cut, and then within the course of a couple of weeks every one of them except me got five-dollars a week raise and everybody except me, and so I was going to go down, I asked my company union representative named Bishko what the reason was and he said, "Well, Mr. Lunn," that is our chief chemist, "said that he had raised every one except one and his work was not satisfactory."

3275 So I was going to go down to see my immediate supervisor, Mr. Mekoskey, as to if it was true that my work was not satisfactory, and if so why he had not told me so. But it so happened he came up the very day that I had intended to go down to see him. I was working in

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the Bronx at the time and he came up to see me. He generally visited the stations occasionally, but this time he did practically nothing in the station, hardly even looked around and it seemed to me obvious that he had come up to visit me.

3276 He spent several hours there, from approximately eleven o'clock until one, and he immediately—and he hemmed and hawed and beat around the bush, so obviously, it took two hours to get out what he wanted to say.

Judge Ransom: I move to strike out the statements—

The Witness: I asked him—

Judge Ransom: Just a moment.

The Witness: Excuse me.

Judge Ransom: I move to strike that out as purely argumentative and self-serving and calling for a conclusion.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

I move to strike out the entire answer, on the ground that there has been no charge, no complaint, no contention made in this case under the complaint with respect to this witness. The matter is not within any issue here, the company has not received any notice of hearing with respect to the claimed discharge of this witness.

Trial Examiner Gates: He may continue, overruled. 3278

Judge Ransom: Exception.

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Trial Examiner Gates: The motion to strike is denied.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Now, you were just getting to the subject of— A. Well, I asked him, "Isn't my work satisfactory?" I told him what they had said, or what he had said and he said, "Oh, yes, the work is all right, the work's all right," and I said, "Well, then, why didn't I get a raise like the rest of them?" Well, then, 3279 it came around and around and he said in effect, he said, the impression had been created, or they definitely had the opinion, that I was the official agitator in the department or something like that.

Q. Agitator about what? A. About salaries and hours and things like that, and I said, "Isn't that the reason why I didn't get a raise?" And he said, "Oh, no, oh, no," and then he said that engineers and technical men were professional men and they should not have unions, they should be individualists. I mean, they should develop individual initiative and take pride in their profession and they should not get together like

3280 laborers and it is bad stuff, this union, although he did not exactly say "bad stuff, this union," but very definitely said that technical men should not have recourse to such methods, they should rely on individual initiative

S. M. 1290

and each one try to do his best and for himself and not worry about the other fellow and then in addition to that—

Q. Just a moment, did you fix the time? A. The
3281 time?

Q. Yes. A. You mean the day?

Q. Yes. A. That was July 6th or 7th, I am pretty sure, I might have notes at home on that.

Q. What year? A. 1935.

Q. 1935? A. Yes, no, no, wait a minute, 1934, excuse me, 1934.

Q. Now, at that time were you a member of any organization other than the E.R.P.? A. Oh, yes, Brotherhood of Utility Employees at that time, the same one as is now the C.I.O.

Q. And when you had joined it— A. I joined it in
3282 October, 1933.

Q. Yes, at the time he spoke with you about the union, were you an officer of the union? A. No, but I was already, let me see, I take that back, I was not an officer of the union.

Q. Were you a member of any committee? A. At that time?

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Q. Yes. A. No.

Q. Were you active in your union work? A. Yes.

Q. Had you been circulating papers? A. Yes, I was a member of another union, too, the Federation of Archi-

3283

tects, Engineers, Chemists and Technicians, because the chemists did not care so much originally for the general industrial union there, the Brotherhood, so we thought, Losee and myself—

Q. But that was not a very active organization, was it? A. Yes, that was the one that had been connected with the activity at the particular time when the raises started coming through all of a sudden.

Q. I see, was that the one that was conducting the activities at the time this man spoke with you about the union? A. That and the Brotherhood.

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Q. Both of them? A. Yes, both of them.

Q. And you were active in both at that time? A. That's right.

Q. What was your—what kind of activity were you engaged in? A. Well, going around visiting the members and trying to get them to join and pointing out the benefits of unionism and circulating.

Q. Which of the two unions were you attempting to get them into? A. Well, both, if possible, that is a fact.

Q. Well, now, explain that. A. Well, of course I originally—

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Judge Ransom: I object to that as wholly irrelevant, not within the issues here.

Trial Examiner Gates: Objection overruled, continue.

Judge Ransom: Exception.

Trial Examiner Gates: Don't answer when there is an objection.

The Witness: All right, I originally tried the Brotherhood because I figured it was better in an —I figured it was the best in an industrial union, but they did not seem to respond very much origi-

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nally to the Brotherhood, so I figured this Federation of Architects, Engineers, Chemists and Technicians, that might interest them more, it had more professionally sound to it, so I managed to get a bunch of them to join that, Losee and myself managed to get a bunch of them to join that and then afterwards they thought it would be better if they tied in with the whole bunch of the employees in the company, that is the Brotherhood.

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3287 Q. So they all went into the Brotherhood of Utility Employees? A. Yes.

Q. When was that? A. That was around April, that is right around April of 1934.

Q. All right, now, then, this man that was speaking with you about your union activities, have you given us his title? A. His title?

Q. Yes. A. I believe it is chemist.

Q. Chemist? A. Yes.

Q. Is he a chief chemist? A. No.

Q. Does he have any supervisory— A. Yes, he had
3288 supervision over these, perhaps, eight men I have referred to.

Q. You being one of them? A. That's right.

Q. What else did he say to you? A. Well, if I might make a short explanation.

Q. All right. A. We had to do sometimes Sunday work and night work testing, that would mean that one man would go around on a Sunday, spend a whole day testing all over the city, or sometimes at night, starting at eight o'clock and maybe ending at five o'clock in the

S. M. 1294

morning going all around, and it so happened that it took all the men approximately the same length of time to do

it, so when they did it, except I believe one man, or it was the contention that one man could always do it much quicker than the others. Now, he intimated to me that I was one of those responsible for allegedly keeping the time up, because you got paid, originally got paid overtime for that and afterwards we got time off for that, and he intimated that I was one of those responsible for preventing the men from speeding up on that work.

Q. I see, are you finished? A. No, then he said, "Well, now, if you will cooperate I will see what I can do for you." So I consulted union men, I did not promise one way or the other, I did not say anything, and I consulted union men when I wanted, I said the best thing would be to bring it up in the E.R.P. and make a scandal of it, of him trying to buy me out, but he said that was not the best course, just lay low and then approximately six weeks time, maybe it was seven weeks, I got the five dollars raise and I got it at a time ordinary raises, according to my understanding, are not given without the approval of the chief chemist. 3290

Now, my raise was dependent upon my work over this period of six or seven weeks and was supposedly dependent on what kind of work I did, which would in- 3291

clude, of course, the last few weeks of that period during which time the chief chemist, Lunn, was out of town on vacation, I believe, and yet ordinarily he would be supposed to approve the raise as I understand it, but the raise came through, I think it was the first of September, Mr. Tompkins, the assistant chief chemist, called me and said I had been doing very good work and they noticed it and they were going to give me a five dollar raise.

Q. What year was that? A. 1934, the same year.

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Q. Now, at any time after that, did you receive any particular commendation from any of your supervisors? A. No, because I immediately started in again that activity.

Q. What kind of activity? A. Well, the company, excuse me, I mean the E.R.P., our department was practically the only one that ever had any general membership meetings and the general council of the E.R.P. had reversed itself four times on the overtime question, so at the next meeting, either the next meeting or the meeting
3293 after, within a couple of months or a month after, I got my raise, we brought this question up in connection with our delegates report on the matter and it was voted by the employees of the chemical department to find out why

the general council reversed itself so many times on the overtime question and I was elected chairman of the investigating committee and Losee was elected secretary. So we proceeded to investigate, that was on a Friday, that was November 16th, we did some other union activity in the meanwhile, but on November 16th, on the fol-
3294 lowing Monday, they already had a petition around which the bulk of the employees had signed calling for another meeting.

This had been done in an undemocratic way or something like that, it said, and we must have another meeting and we kept on investigating and they had another meeting on January 4th.

Q. January 4th of what year? A. The next year, that is 1935, to vote us out of office, so Losee and I prepared a three-page report which we read to them on the company union, I mean the E.R.P., and then we took a vote and by one vote it was voted to continue, not to vote us out, so we continued, we wrote a letter to Vice-president Stillwell—

Judge Ransom: I object to this line of testimony. I ask for what purpose it is offered, it is taking up a great deal of time, but it is not within the issue here.

Trial Examiner Gates: Will you answer that question, please, Mr. Moscovitz?

Judge Ransom: For what purpose is this mon-

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ologue being given?

Mr. Moscovitz: Well, the testimony itself is in 3296
support of Mr. Losee's testimony and it will also establish certain acts of discrimination by the company so far as this particular witness is concerned.

I hope after he completes his testimony—

Judge Ransom: Then upon that statement I object to it and move to strike out the testimony of the witness, there is no claim in either the charge or the complaint of any discrimination with respect to this witness. We have been brought here to try to define the issues, we have had no hearing or any notice of any other hear- 3297
ing. If the claim of discrimination against this witness is claimed, we have had no opportunity of it or notice to prepare for it. I had no idea whatever until this witness was called to the stand that he would be a witness, or that any claim was made that he was included within the issues in this case.

Trial Examiner Gates: Do you want to allege violation of 8-3 in respect to this witness?

Mr. Moscovitz: There is no allegation in the complaint at this time, Mr. Examiner, regarding the discharge of this witness.

Trial Examiner Gates: Continue.

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Judge Ransom: Exception.

Trial Examiner Gates: The motion to strike is denied.

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The Witness: So the committee wrote a letter, they wrote several letters, one was to Vice-president Stillwell, who was in charge of employee relations of the Consolidated Gas and we asked him what was the cost of the E.R.P., approxi-

3299 mately, and to what account it was being charged? I mean, who was paying for it and we asked in particular who it was that wrote this, the constitution of the E.R.P.? It was a little yellow book and we never received an answer from him.

Q. When did you write? A. That was in January of 1935.

Q. Did both you and Solosy sign your names to it? A. I am not sure as to that. I know Solosy signed his name because he was secretary. I don't know whether he signed or not, but our names were on a printed letterhead.

3300 Q. Tell us more of your investigation activities. A. We sort of subpoenaed the leading representatives of the E.R.P., the general council, and we had our delegate get a room in the Gas Company building for a certain evening after work, and we wrote them letters and told them to come there, that we were going to investigate them, and they immediately called a special meeting of the general council on company time, of course, to consider what to do with these invitations.

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Q. When was that? A. That was also in January of 1935, and they decided instead of coming to our meeting,

that they would invite us, they would have another special meeting of the general council and invite us to that. I believe that was January 23rd we held it, so we got time off from work and we spent the afternoon there asking questions about the plan.

Q. How long did this investigation of yours continue? A. From November 16th to February 7th.

Q. I see. 1936? A. 1935.

Q. Then after you had completed your investigation—

3302 Judge Ransom: You mean November, 1934 to February, 1935?

The Witness: That's right.

Judge Ransom: November, 1934 it started?

The Witness: That's right.

Judge Ransom: Finished February, did you say?

The Witness: 1935, yes.

Q. (By Mr. Moscovitz) When you finished, you submitted your report, is that right? A. That's right.

Q. After you submitted this report, did you spend your time in activities in support of the Brotherhood of Utility Employees? A. Oh, yes. 3303

S. M. 1300

Q. And was your time then exclusively, outside of your working hours, spent in that work? A. Practically, yes.

Q. And you did not then continue after that period of time with the Architects Union, is that right? A. That's right.

Q. At this point, after February 7, 1935, were you a member and officer of the Brotherhood of Utility Employees? A. Not at that time. I was elected in September, beginning of September.

3304 *Philemon Ewing—For N.L.R.B.—Direct*

Q. September, 1935? A. That's right.

Q. All right. What office? A. Secretary of Equity Local No. 100. That had charge of Manhattan.

Q. And between February 7, 1935 and September, 1935, when you became an officer, were you still active in your work? A. Oh, yes. Solosy and I were editors of a little union paper, the "Gas Man." We had our names on it.

Q. And you distributed it? A. Yes, we did.

Q. Where did you distribute it? A. At the various
3305 offices and shops.

Q. At the exits where people left work and went to work? A. That's right.

S. M. 1301

Mr. Moscovitz: I think, Mr. Examiner, this would probably be a good time to stop this examination because I will have a chance now to talk to Judge Ransom. We could get the remaining witnesses here tomorrow and we probably would be in a position to close tomorrow.

Judge Ransom: There is some data that Mr.
3306 Moscovitz want that if we are going to have for him, I will have to be able to get in touch with the men before five o'clock.

Trial Examiner Gates: Will that take up all the time between now and five? We could suspend temporarily and finish with this witness.

Judge Ransom: No, we would have to get to them.

Trial Examiner Gates: All right, we will recess until ten o'clock tomorrow morning.

(Whereupon, at 4:30 o'clock p. m., the hearing was adjourned to June 24, 1937, at 10 o'clock A. M.)

Minutes of Hearing, Held June 24, 1937 3307

S. M. 1302

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated companies, BROOKLYN EDISON COMPANY, INC., NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY, *Respondents*, and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the Committee for Industrial Organization.	Case No. II-C 224

3308

3309

14 Vesey Street,
New York City, N. Y.,
June 24, 1937.

The above-entitled matter came on for hearing pursuant to adjournment taken June 23, 1937, at 10:00 o'clock A. M.

Before:

ROBERT M. GATES, Trial Examiner.

3310 *Philemon Ewing—For N.L.R.B.—Direct*

Appearances:

DAVID A. MOSCOVITZ, Esq., attorney for the National Labor Relations Board.

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WILL MASLOW, Esq., Attorney for the National Labor Relations Board.

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, New York, appearing for
3311 United Electrical and Radio Workers Local 1212.

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City, New York (By William L. Ransom, Jacob H. Goetz, and Pincus M. Berkson, of counsel), appearing specially for the respondent companies, reserving all objections to jurisdiction.

S. M. 1304

3312 Trial Examiner Gates: Proceed.
Mr. Moscovitz: I will recall Mr. Ewing.

PHILEMON EWING, was recalled as a witness for the National Labor Relations Board, being first duly sworn, testified further as follows:

Direct Examination (Continued):

Q. (By Mr. Moscovitz) What was the date of your discharge, you said? A. January 17, 1936.

Q. Well, after you became an officer of the union you testified that you continued being active? A. That is right.

Q. You testified that your activity was of the kind which resulted in distribution of circulars and the securing of membership and so on? A. That's right.

Q. You worked in that regard hand in hand with Selassie, is that right? A. That's right.

Q. And that was true up to the time of your discharge? A. That's right.

Q. And did any of your bosses or supervisors talk with you during that period of time?

Judge Ransom: Just a moment, I object to the question and to this whole line of inquiry. There 3314

S. M. 1305

is no issue tendered here by the complaint or by the charge with respect to discharge of this employee or with respect to any discriminatory treatment of this former employee.

There has been no notice of hearing with respect to a claimed discharge of this employee for any reason claimed to be within the jurisdiction of this Board. The company has in no way been apprised until late yesterday afternoon that any claim was made in behalf of the Regional Director or the Board as to this former employee in any respect whatsoever in behalf of the respondent Con-Edison Company. 3315

We claim surprise and complete lack of the preliminary procedure necessary to apprise us of such an issue and bring it before this Board for trial.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Will you please repeat the question?

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(Reporter repeated the pending question as follows:

"Q. And did any of your bosses or supervisors talk with you during that period of time?")

A. Are you referring to the period after I got elected an officer?

Q. (By Mr. Moscovitz) That's right. A. Wait a minute—I can't recall offhand.

Q. All right. A. What I testified was prior to that

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S. M. 1306

but I was already openly a union man as one of the editors of that paper.

Q. And did you know whether or not you were being watched by any undercover man during that period?

Judge Ransom: Objected to as incompetent, wholly outside any issue here, no claim made in the complaint with respect to this employee, outside any issue here.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

3318

The Witness: Well, yes, but particularly in the early period prior to my $5.00 raise. I had a feeling that I was—

Q. (By Mr. Moscovitz) Well, did you know? A. Yes, because I started following them around, and in one case I went up and followed a man around several blocks and all around and I finally went around and walked up to him and apologized, and said, "I am sorry. I was following you because I thought you were following me. Do you want my name and address?"

And he said, "No".

And I told him I was fed up with being followed and

from that time on, it was the spring of 1934, from that time on, I didn't notice so much of it, and it must have been done by a better grade of detective.

Judge Ransom: I move to strike out the entire argument of the witness on the grounds already stated, on the grounds further that it is

S. M. 1307

purely hearsay and involves a statement of what this witness felt. I have no doubt this witness 3320
felt all sorts of things. He was followed by almost everybody in creation, and I further make the point, as a grounds for my motion, that it now affirmatively appears that any such feelings or psychoses on the part of this witness ante dated the time alleged in the complaint or the period alleged in the complaint is that from and after which any events of this character took place; that the complaint here specifically and definitely relates to a period from and after July 5, 1935, and there has been no notice of hearing and no complaint which tenders any issue in those re- 3321
spects as to this employee or any others prior to July 5, 1935.

Trial Examiner Gates: The answer may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What took place on the day you were last employed by the company? A. I worked in the morning as usual at Long Island City. Then I went to Flushing and did the morning test there and was waiting for the afternoon test when I got a phone call from my immediate supervisor, Mr. Nikowsky, telling me, "I have to inform you"—or something like that—"that after today your services are no longer required",

3322 and he asked me to do the afternoon test at Flushing and then come to the office at Irving Place.

Q. Did you go to the office at Irving Place? A.

S. M. 1308

That's right.

Q. What happened there? A. They told me I was no longer needed; they showed me—

Q. Who told you? A. Nikowsky, I believe, and they showed me some letters saying they had closed down a 3323 coal gas unit in Astoria, or something like that, and therefore they didn't need so many people and so on and so forth and they gave me a week's pay for every year in the company and Mr. Thomkins, the assistant chief chemist, said, "Of course, this has nothing to do"—no, I asked him if my work was satisfactory, and either I asked or he volunteered the statement that my work was satisfactory, "that it is an unfortunate thing the company is compelled to do this due to being overmanned" or words to that effect. In other words, it was purely a reduction in personnel.

Q. Was there any discussion with you about your 3324 union activities at that time? A. No, there wasn't.

Q. Did you ask anything about it? A. On that particular occasion?

Q. Yes. A. No, but at the E.R.P., at a meeting of the E.R.P.—

Q. That was afterwards? A. Prior to that and also

S. M. 1309

afterwards it was taken up by the general council and some motion was passed.

Q. What meeting of the E.R.P. are you referring to?

Judge Ransom: I object to that as wholly outside of any issues here.

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Trial Examiner Gates: Just a moment. When an objection is being made.

Judge Ransom: I object to that on all the grounds stated previously as to this witness' testimony.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What E.R.P. meeting are you referring to before your discharge? A. A meeting was called.

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Q. What date? A. I would have to refer to here, it was a day or two before I was fired, it was in the air, rumors that Selassie and I were going to be fired and our delegate called a meeting I believe it was the night before we were fired.

Judge Ransom: I move to strike out the witness'—

Trial Examiner Gates: When Mr. Ransom says that he objects, please don't answer.

The Witness: All right.

Judge Ransom: I move to strike out the witness' self-serving declaration as to what he mentally regarded as rumors.

3327

S. M. 1310

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What was the purpose of the meeting and where was it held? A. It was held in Room 1831, I believe it was 1813, the regular room of the E.R.P. for the guests and the employees after five o'clock. I believe it was the day before we were fired or possibly two days before, I think it was the day before, though, and he told us then—

Q. Who told you? A. Bishko, our delegate told us that he had received notice that we were being fired and the purpose of the meeting was to deal with the justice or the injustice of the matter. If you will permit me I think I have a statement in here of the E.R.P. in connection with that, it will take me a second to get that out.

Q. You won't need that; if you will just give us any further statement you can on the purpose of it? A. That meeting?

Q. Yes. A. Well, that was the sole purpose.

329 Q. I see. And what was done about it? A. It was appealed to the general council.

Q. You mean the fact that there was— A. Our dismissal was appealed.

S. M. 1311

Q. Well, you hadn't been dismissed then? A. Well, we had received notice we were going to be dismissed.

Q. The E.R.P. had? A. Yes.

Q. And had they already appealed it or did they appeal after the meeting? A. Well, after the meeting because the exact time when the appeal was made, I 330 don't know, it was after that meeting and some time before the following Monday.

Q. I see. So that the appeal was taken after the meeting and not really lodged until you were discharged? Is that right? A. Possibly so, or possibly it was lodged before, only on the day I was discharged I don't know.

Q. I see. Then what was done after your discharge? A. After my discharge?

Q. After you and Selassie were discharged? A. Why, some motion was passed, resolution was passed by the general council, a copy of which I have here.

Q. Yes. A. I don't remember the exact contents of it because it was a year and a half ago, if I can take this—

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Q. Well, what is your recollection of it? A. My recollection of it is that they considered it unjust to lay us off or fire us and requesting that we be retained or reinstated and the answer of course was no.

S. M. 1312

Q. The answer from whom was no? A. From the company, through Vice President Stillwell, and Vice President Stillwell told our delegate, Bisko, that under no circumstances would Selassie and Ewing ever be taken back by the company.

3332

Q. Do you know about when that was made, that statement? A. The week end of our firing, within a day or so.

Q. And what was the Brotherhood of Utility Employees doing for you and Selassie if anything at that time? A. Well, they went to the Regional Labor Board, but at that time the N.R.A. had been—

Q. Well, outside of steps that they may have taken with the Regional Labor Board, did they take any steps in the company? A. Well, they protested and they sent out a press release accusing the company of, which was printed in practically all of the papers, accusing the company of firing us for union activity.

3333

Q. But did they go to see the company about it, do you know? A. Not that I can recollect.

Q. All right, and what did you personally do further about it, if anything, or you and Selassie, did you do anything about it? A. Oh, the union picketed the company's buildings for awhile and we participated in that, aside from that I don't remember having done anything on the case.

S. M. 1313

Q. And was that the last you worked for the company? A. That's right.

3334 *Philemon Ewing—For N.L.R.B.—Direct*

Q. And have you been working since? A. No, I just about a month ago, I got a W.P.A. job, prior to that I was on home relief practically since the month after I was fired.

Q. Until a month ago? A. That's right.

Q. What did you do, get paid a certain amount from Home Relief? A. Yes, about $26.00 a month.

Q. A month? A. That's right.

Q. Where are you working now? A. At 480 Canal, I think the number is, it is a purchasing department,
3335 New York City, analyzing and testing coal.

Q. Is that W.P.A.? A. That is a W.P.A. project for the city.

Q. You have been doing that for a month? A. Approximately a month, I don't work every day, of course, a certain number of days.

Q. Do you get paid by the day or the week? A. I get paid, well, on an hourly rating, I mean by the hour.

Q. What do you get an hour? A. Well, it comes to

S. M. 1314

$9.09 for an eight hour day, but I work, it is $95.00, I
3336 think, for a four week period.

Q. $95.00 a month? A. That's right.

Q. That is figuring a month as a four-weeks period? A. That's right.

Q. And that is where you are still working? A. That is right.

Q. Now, do you do anything yourself—did you do anything yourself with Selassie outside of what you have already told us to go back to work with the company? A. I can't recollect, I might have done something else.

Q. Or do you recollect anyone else doing anything for you? A. Not offhand, there may have been protests

or requests by the union to the company but I don't recollect it.

Mr. Moscovitz: That is all.

S. M. 1315

CROSS EXAMINATION:

Q. (By Judge Ransom) You were in what department of the Consolidated Gas Company? A. The chemical department.

Q. From what office did you work? A. No. 4 Irving 3338
Place.

Q. You went to work with the company with what rating? A. Junior tester. I was called at that time, in the beginning.

Q. And your rate of pay was $20 a week? A. That's right.

Q. Then, I think you said that in 1931, as part of salary adjustments in your department, you were raised to $22.50? A. That's right.

Q. That was for how many hours a week? A. Let's see—I have to stop and think—I think it is 39—let's see—no, 38 hours a week. 3339

Q. Then, in the spring of 1933, under the general reduction in the hours of work, and the rate of pay per hour, leaving the rate of pay per hour unchanged for the fewer hours, your salary went down to $20.62; did it not? A. Something like that.

Q. That was for how many hours? A. Well, that was for three hours less.

Q. You didn't work on Saturdays? A. No.

S. M. 1316

Q. Then that was for a 35 hour week? A. That's right.

3340

Q. Then throughout the company, in 1934, there was an increase in the rate of pay per hour so as to restore half of the previous reduction? A. That's right.

Q. And that brought you back to $21.50 per week for a 35-hour week? A. Something like that, yes.

Q. And during all that time, you were a junior tester? A. I believe so. My title was changed, but I don't know just exactly when.

Q. Well, in September of 1934, there was a general reclassification of salaries and titles, was there not?

3341 A. No, sir.

Q. In your department? A. No, sir.

Q. You don't know anything about a general reclassification? A. I know there was not one. I can give you the information if you want it.

Q. It probably wouldn't be right so there is no use in having it.

Mr. Moscovitz: I object to that statement, Mr. Examiner. It probably would be right and that is why Judge Ransom doesn't want it.

S. M. 1317.

3342

I withdraw that statement, the last part of it.

Q. (By Judge Ransom) In any event, at that time your title was changed? A. It was probably in September when my title was changed, when I got a $5 raise.

Q. That was some time after the increases had been granted, the like increase that had geen granted to various others who were doing the same kind of work? A. That's right.

Q. At the time you spoke about January 16th or 18th of 1936, your rate of pay was $26.35 for 35 hour week? A. That's right.

Q. Now, in the chemical department of the company,

your duties were the testing of gas for its heating value? A. That's right.

Q. By the way, how old were you on January 17, 1936? A. 31½.

Q. What? A. 31½.

Q. And were you married or single? A. Single.

Q. This testing for gas or its heating value, did that take place in 15th Street, or did it take place at various places on the district? A. I have done it all over, including occasionally at 15th Street once or twice.

3344

S. M. 1318

Q. In the various course of your duties, where was it done? A. At various district stations throughout the city.

Q. Where were those stations located? Will you state for the record? A. Surely.

Q. Yes. A. One was at Elizabeth and Hester; another was 79th—

Q. That is in the Borough of Manhattan? A. That's right.

Q. Yes. A. Another was at 79th Street and 3rd Avenue in Manhattan.

3345

Q. Yes. A. One was at the Gas & Electric Building on Roosevelt Avenue in Flushing, right near Main St.

Q. Yes. A. Another was Long Island City. For the like of me I don't know the number of that street. I don't know those Queens streets very well. It was right next to the Paramount Studios out there.

Q. Yes. A. There was one at 529 or 629 Cortland Avenue in the Bronx.

Q. Yes. A. There was another one at 1555 Purdy St. in the Bronx.

S. M. 1319

Q. Yes. A. Then there were several others. One

that was opened up at Amsterdam Avenue in the 170's. I worked there for a while. It was, I believe, a temporary station.

Q. Any more? A. There was one over in the Northern Union Building, further east, in the Bronx. I worked there for a period. I think it was Webster Avenue. I am not certain.

Q. Now, do you know who established the location of these testing stations? Are they established by the city or by the Public Service Commission? A. The
3347 Public Service Commission established at least most of them. As to every single one of them, I couldn't say, like the Amsterdam Avenue one—I don't think they established that.

Q. Were you aware of any distinction between testing stations that had been fixed and located by the Public Service Commission and any which had been fixed and located by the City of New York. A. Yes.

Q. That is, there were some of these that were testing stations established by the Public Service Commission and others that were fixed and established by the city? A. Well, as to the second ones, I don't know that they were definitely established by the city, but they
3348 were in one case like the Amsterdam Avenue, I under-

stand it was put there checking the city, which I believe had one nearby there somewhere.

Q. Do you know that they were both city testing stations and stations at locations fixed by the Commission, the Public Service Commission? A. That's right.

Q. The value of gas to the consumer depends on its heat content, does it not? A. Yes.

Q. And that is expressed in the terms of British Thermal Units? A. Per cubic foot.

3349

Q. Who establishes the required heat content of gas sold in the city of New York? A. The Public Service Commission.

Q. That is fixed by the order of the Commission? A. Well, now, I can't recollect, either by the legislature or by the Commission, I don't knov but it has been some time since then, I did know.

Q. And you have not any idea whether that is by order of the Commission or by statute of the State? A. I did, but I don't now, it is some time since I have given any thought to these matters.

3350

Q. But in any event, either by the legislature or by an order made by the Public Service Commission, there

S. M. 1321

is a required heat content of gas to be supplied in this locality? A. That is right.

Q. And do you know whether that is a local standard for the city of New York or it applies outside of the city? A. Different standards apply in different communities, all governed by the Public Service Commission.

Q. That is, the standard for the city of New York is a local standard? A. That's right.

3351

Q. These testing stations that you speak of, are located at these various points, which you mentioned on the company's gas mains through the city? A. Yes.

Q. And is the purpose of these tests to have a record of the quality, the heat content of the gas, as it goes to local consumers in these various parts of the district? A. That's right.

Q. And do you know whether, in addition to the requirements of the state of New York as to the gas supplied locally within the city of New York, there are also requirements of the city of New York itself either under contract or statute? A. I know that there was a dispute

between the city and the state on the matter, but my understanding was that the state had the say in the matter

S. M. 1322

and the city was sort of, the stations, from a legal standpoint was sort of superfluous since the state was the one that had the say in the matter.

Q. But in any event you know that the city of New York did claim a right to require that the gas supplied to it locally should be of a certain B.T.U. standard? A.
3353 That's right.

Q. And such testing stations as were city stations were for the purpose of seeing whether the gas kept up to the standard? A. That's right.

Q. Were these testing stations located at gas plants, or were they located out on the district away from plants? A. They were located out on the districts, to give gas as it was received by the customers rather than gas as made at the plant.

Q. That is, generally speaking, were these locations in populous and congested districts where there were many consumers? A. The one at Elizabeth Street was,
3354 the one at 79th Street was, the one at Cortland Avenue, Bronx, was, the one at Purdy Street was more open, it was one-family houses around there and some vacant lots.

Q. You are speaking now of Purdy Street where? A. In the Bronx.

S. M. 1323

Q. The Bronx? A. Yes.

Q. Go ahead. A. The one at Roselle Avenue, Flushing, was in a populous district, the one at Long Island City, though, had considerable vacant lots right around it

and two story houses in the immediate vicinity mostly.

Q. In any event, these were testing stations that tested the quality of gas delivered to local consumers? A. That's right.

Q. Were these—strike that out. Let's take the 79th St. testing station, that was one that you were serving, wasn't it? A. Yes, sir.

Q. Will you describe that station? A. The station?

Mr. Moscovitz: Mr. Examiner, I don't quite see the purpose of relevancy of this line of cross examination. 3356

Judge Ransom: I think it will appear in time, I may be rather slow about it.

Trial Examiner Gates: Very well, proceed.

The Witness: The station was located on the top floor of what I suppose would be called a tenement house. The whole floor was leased by the company, but only two rooms used for testing pur-

S. M. 1324

poses. The rest of it is sub-letted to an employee.

Q. (By Mr. Ransom) That is, an employee lived on 3357 the rest of that floor? A. That's right.

Q. He works for the company? A. That's right.

Q. That is, he does not work at the testing station? A. No.

Q. What was true of the rest of the building, was the rest of the building an ordinary tenement house? A. Let's see, what was directly underneath, directly underneath a family occupied it underneath, that was a city testing station, gas.

Q. And the rest of the building was occupied as—A. Well, the ground floor, I mean one flight up was a dentist and then on the ground floor there was an optometrist.

3358 *Philemon Ewing—For N.L.R.B.—Cross*

Q. Then this testing station was two rooms on the top floor of the tenement house? A. It was what?

Q. It was two rooms on the top floor of this tenement house? A. Yes.

Q. And it was brought up from the street by risers just as it would be brought into any other residential premises? A. That's right.

Q. Now, what was in this testing station in these two

S. M. 1325

3359 rooms that comprised this testing station? A. Well, I will dispose of the outer room first, because that is the quickest. There was an old apparatus for measuring the candlepower of the gas, that was no longer used because the legal requirement for candlepower had long since, that was the old station by the way was still in service so that was why that apparatus was still there, but in addition there were pressure charts for various mains in that room, and I had practically nothing to do with that room.

The inner room had a cabinet with a calorimeter in it, a specific gravity apparatus.

3360 Q. What is a calorimeter, is that a kind of an apparatus on which Mr. Solosky worked? A. Not in the latest period, not mainly, he used a different type of calorimeter, a more complicated type of apparatus.

Q. But in his tests he used the calorimeter? A. Yes, a different kind though.

Q. What is a calorimeter? A. It is an instrument for measuring heat in any way or measuring—

Q. Well, I think he said that a calorimeter was a kind of an apparatus that was used on customers' premises usually? A. What?

Q. On customers' premises, calorimeters are used

S. M. 1326

there? A. Oh, yes, on customers' premises like in the test station, you mean?

Q. Well, when customers want a test of the heat value of gas? A. Oh, I don't believe so. I don't think I ever heard of a customer wanting it.

Q. Go ahead with the description of the room where you did your work. A. Then there was an apparatus for the analysis of gas. Do you want details?

Q. Yes, give some details. A. There was an apparatus for testing due point of gas. Another apparatus 3362
used for testing if there was any hydrogen sulphide in the gas. Then there was an air-cooled condenser for testing, for determining, the amount of sulphur in gas. Then there was another apparatus for the use of testing for ammonia in gas, the amount of ammonia in gas. Then there was a standard meter bottle there for standardizing, not the calorimeter, but the meter itself when need be. That was the main equipment.

There were incidentals.

Q. How many employees would be at this testing station when you went there? A. None.

3363

S. M. 1327

Q. Any? A. Normally only one, whoever worked there.

Q. You mean whoever went there? A. That's right.

Q. That is, there were no employees stationed there? A. That's right.

Q. When you went there, you went alone? A. 99 per cent of the time, that's right.

Q. How did you get in? A. Well, they used to be—I think, during the same period, I may have had a key. I don't know. But I know at other times there was a key hanging up behind a couple of doors against the

3364 wall. There was a key on a nail there. The rest of the time we got in by whoever lived there and on one occasion they went out to church when I had to do night testing and I was not expected, so I had to climb up the fire escape to get in.

Q. Where was that? A. That was at 79th St.

Q. But at all the testing stations there were no employees there regularly, only the man who came there to make the test? A. Yes, excepting possibly at Elizabeth Street, wherever work was done as well.

3365 Q. The Elizabeth Street testing station was at or

near one of the branch offices? A. Near one.

Q. The only person who would be there would be the person who went to make the test? A. That's right.

Q. Now, when you went to a testing station, let's say this 79th St. one, how long were you there? A. That would depend on what I was supposed to do there, see. There were different tests, but not all of us were required to do all of the tests.

Q. What ones were you ordinarily required to make 3366 in the course of your duties? A. Well, normally there used to be three mains there, a double test on each main in the morning for B.T.U.'s, and then a check testing case, I got results below whatever the figure happened to be set at that time, and then tests on hydrogen sulphide, due point, gravity on each one of the mains. That would be for morning and afternoon.

Then, analyses of the gas, the number of analyses numbered from time to time, how many we had to do, I mean, it would vary.

Q. How long would all this take ordinarily at one testing station, how many hours? A. I don't know. Let's see, perhaps an hour and a half or two hours at 79th St.

S. M. 1329

Q. And how often would you go to that station? A. I can't answer just that way, you see, because the assignments varied. Now, the one time I was stationed at that station alone, and another time I had a combination of that station and Hester St., later on when they began to tighten up a bit.

At another time I had to do Long Island City and Flushing and the afternoon test at that station, and another time I had to do night tests at that station, when all I had to do was B.T.U.'s. The assignments varied. 3368

Q. In any event, your work at any one of these stations would take several hours, wouldn't it? A. Well, no. If there was only one main in a station, as in most of them, it would take, well, a half hour, three-quarters of an hour, depending, you see, on weather conditions, we had to get the air, the water and the gas all pretty much at the same temperature. We might have had a little trouble on that if there was no hot water, we would have to heat some.

Q. You say you made these chemical tests of ammonium sulphide and the like, sulphur, do you know whether those tests were likewise under some rule or requirement of the Public Service Commission? 3369 A. That's right, that's right.

Q. And do you know whether there was any require-

S. M. 1330

ment in those respects under city contract? A. I don't recollect.

Q. In any event, for all of these testing stations you have mentioned, there were eight men in your department who were doing that kind of work? A. Well, not quite exactly that way. I estimated about eight men under Mr. Mekowskey, and he had that job. He also

3370 *Philemon Ewing—For N.L.R.B.—Cross*

had other jobs under him of testing air in manholes. I mean, samples of air, when a purging job was to be done for opening up a gas line, or anything like that, he had also these other things in his section and I would have to stop and count them, the exact number of them there, but I estimated about eight.

Q. Well, it was some such number? A. Yes.

Q. Now, Dr. Lunn, about whom you have testified, was he the chief chemist, the head of the chemical department? A. Dr. Lunn?

3371 Q. Lunn? A. Yes.

Q. He was the chief chemist? A. That's right.

Q. The head of the chemical department? A. That's right.

Q. You testified about the organization of the Brotherhood of Utility Employees in October of 1933.

S. M. 1331

Who, as you understand it, organized that brotherhood at that time? A. The employees—excuse me, October, 1933, that's right.

Q. Well, who organized— A. The employees.

3372 Q. What? A. The employees.

Q. I am asking for names. A. Well, there was—I can only name names that are known. There was a man Robert Berry.

Q. Yes. A. There was another one Gordon Mitchell.

Q. Yes. A. That is all I can recollect off-hand. There were others. Oh, there was Jake Shulter.

Q. Well, Robert Berry. Is he working for the company now? A. That's right.

Q. Gordon Mitchell? A. That's right. That is unless he got fired in the last month or so.

Q. I am asking now about Gordon Mitchell. A. No.

Q. He is not employed? A. No.

Q. Who else did you mention? A. Jake Shulter.

S. M. 1332

Q. Where did he work? A. I believe he worked in the New York & Queens.

Q. Is he still employed by the company? A. No, he got fired approximately a year and a half ago.

Q. You say this is October, 1933 or '32? A. '33.

Q. Now, when was it you say you had this feeling or sensation of being followed? A. Oh, that occurred at different times. 3374

Q. Well? A. The first time was in the Spring of '34.

Q. The Spring of '34? A. That's right.

Q. And can you fix the date more definitely? A. I am afraid I can't. It was in the Spring months then.

Q. Any time after that? A. Oh, yes.

Q. When? A. Also in the summer of '35.

Q. Well, what month? A. Various months, somewhat in the Spring, too, say, April, June, perhaps, and also August even. For one thing, there was a man who lived next door to me in the next—

Q. I am just asking you what time? A. Oh, excuse me. 3375

S. M. 1333

Q. Any after August? A. Yes, it seemed to me, I would come home from the union office, it seemed as if there was somebody watching my house, some people that behaved very suspiciously on several occasions. That would have to be in September or later.

Q. Well, how much later? A. Well, after I got elected secretary.

Q. When were you elected secretary? A. The beginning of September.

Q. 1935? A. That's right.

3376 *Philemon Ewing—For N.L.R.B.—Cross*

Q. That is, you joined the Brotherhood in October of 1933? A. That's right.

Q. That was when your circularization of literature began? A. No, I even did some prior to that, but I did not have a membership card until then.

Q. But you had been circulating Brotherhood literature before that? A. That's right.

Q. Any other kinds of literature? A. What do you mean, other kinds?

Q. I mean, had you been distributing anything else
3377 to employees except Brotherhood literature? A. Federation literature.

S. M. 1334

Q. What federation? A. Federation of Architects, Engineers, Chemists & Technicians.

Q. Anything else? A. I don't know.

Q. Well, why are you looking at Mr. Moscovitz? A. I beg your pardon?

Q. Why are you looking at Mr. Moscovitz, why not answer the question?

Mr. Moscovitz: He probably is looking for an
3378 inspiration, Judge.

The Witness: Well, I may have given other things out.

Q. (By Mr. Ransom) What? A. What?

Q. Yes. A. Various labor things, pointing out the advantages of unionism.

Q. Published by whom? A. I don't recollect offhand.

Q. You mean to say you don't recollect? A. Various things, Heavens, there is all different things.

Q. You don't want to tell this Board what they were or who published them? A. Well, how can I remember every little thing, Judge, that is five years ago, I don't keep a diary.

Q. Well, what organizations were you affiliated with

S. M. 1335

at that time? A. The Brotherhood, the Federation.

Q. Any others? A. Well, I decline to answer.

Q. I thought so. A. I mean I don't know whether I have a legal right to, but—

Q. You just decline, do you? A. Yes.

Mr. Moscovitz: You don't decline to answer the labor organizations you belonged to at that 3380 time, do you?

The Witness: No.

Q. (By Mr. Ransom) You said that when your employment was terminated, you received the separation allowance? A. That's right.

Q. And that was what, in amount? A. Well, it was somewhere in the neighborhood of $150, it was a week for every year I had spent in the company.

Q. That's a week's pay for every year you spent with the company? A. That's right.

Q. That was after June 18, 1936? A. June 18th?

Q. January 18th? A. January 17th is right. 3381

Judge Ransom: I think that's all.

S. M. 1336

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) When you were discharged, was any reason other than the one you have already given assigned for your discharge? A. No, it was made clear that it was not for unsatisfactory service.

Q. And the only reason given was that one place was shut down and there was going to be a transfer of employees and you had to go, is that it? A. That's right.

3382

Q. Do you know whether or not any new person was brought in to take your place? A. Since then, no, they merely speeded up all the men all around, that's all.

Q. Was there plenty of work for you at the time you were let out? A. Let out?

Judge Ransom: I object to that as calling for a conclusion.

The Witness: I worked hard.

Trial Examiner Gates: Do you wish to state a further objection?

3383

Judge Ransom: What?

Trial Examiner Gates: Do you wish to state a further objection?

S. M. 1337

Judge Ransom: All I object to is calling purely for a conclusion.

Trial Examiner Gates: The record may stand.

Q. (By Mr. Moscovitz) You said, "and how"? A. I said, "Yes, there was plenty of work for me, I was kept occupied without any difficulty"

3384

Q. Was there any let down in your work from what it had been? A. Yes, the time they tried to speed me up and I kicked and then they finally let down.

Q. I know, but were your regular duties decreased immediately before your discharge or were they on the same level or were they increased immediately before your discharge? A. As far as I can recollect, they were about the same, I have here approximately some carbon copies of tests done at that time just preceding my being fired, I mean, a carbon copy of the hours, so if it is worth while to dig them out, I don't know whether it is worth while to check on them or not.

Q. How many hours were you working? A. The regular seven hours a day.

Philemon Ewing—For N.L.R.B.—Recross
Terrence McGowan—For N.L.R.B.—Direct

3385

Mr. Moscovitz: That's all.

RECROSS EXAMINATION:

Q. (By Mr. Ransom) Do you know whether there has been any decrease in the number of testing stations? A. Since?

S. M. 1338

Q. No, during the time you were at work? A. No, if anything, they were increased, these extra ones were put on like Amsterdam Avenue and this one up at Northern Union Gas.

3386

Q. When was that? A. That was in the summer of '35, I believe.

Q. You say you were laid off or discharged? A. I claim discharge for union activity.

Judge Ransom: That is all.

(Witness excused.)

Mr. Moscovitz: I will call Mr. McGowan.

3387

TERRENCE McGOWAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. 1532 Amsterdam Ave.

Judge Ransom: Speak up so you can be heard.
The Witness: 1532 Amsterdam Avenue.

Q. (By Mr. Moscovitz) New York City? A. That's right.

3388 *Terrence McGowan—For N.L.R.B.—Direct*

Q. By whom are you employed at the present time? A. By the New York & Queens.

Q. In what line of duty? A. The overhead bureau, Elmhurst Line department.

S. M. 1339

Q. How long have you worked for the company? A. Since 1926.

Q. Were you at one time a member of the E.R.P.? A. Yes.

3389 Q. Been a member of the I.B.E.W.? A. Yes.

Q. Now a member of it? A. C.I.O.

Q. U.E.R.W., which is affiliated with the C.I.O., is that right? A. That's right.

Q. When did you become a member of the U.E.R.W.? A. In 1935.

Q. That is the C.I.O.? A. C.I.O.

Q. Yes. A. Well, that was—

Q. That is the United Electrical Radio Workers? A. That was in, when we swung out of the I.B.E.W. into the C.I.O., that was in March, I think, of this year.

Q. Are you an officer of the C.I.O.? A. No.

3390 Q. Were you an officer of the I.B.E.W.? A. No.

S. M. 1340

Q. The E.R.P.? A. No, any more than to be a steward.

Q. A steward under the E.R.P.? A. Yes.

Q. What does a steward do under the E.R.P.? A. Well, you have got to collect dues, mainly collect dues.

Q. Now, you say you became a member of the C.I.O. some time in March, 1937, is that right? A. That's right.

Q. After becoming a member of the C.I.O. in March, 1937, do you recall whether or not your supervisor dis-

cussed with you the question of becoming affiliated with any other labor organization? A. No.

Judge Ransom: What was the answer?
The Witness: No.

Q. (By Mr. Moscovitz) Were you with any other men after March, 1937 called into your supervisor's office? A. Yes.

Q. When, do you recall? A. Oh, April 22nd.

S. M. 1341 3392

Q. Was it during your regular working hours? A. That's right, it was between the hours of eight and twelve.

Q. And were the other men overhead bureau men too? A. Yes.

Q. How many? A. Well, I can't give a definite number, I will say eight or seven were in the gang.

Q. About seven? A. Yes.

Q. Who called you into the supervisor's office? A. We were called in by Mr. Martini.

Q. What's his first name? A. That I don't know.

Q. Is that the Mr. Martini who had previously been 3393 with the E.R.P. in an official capacity, do you know? A. The E.R.P.?

Q. Yes. A. I don't know.

Q. Do you know where he comes from? A. What's that?

Q. Where does Mr. Martini come from, did he work in your bureau? A. Yes, he works in our bureau.

Q. And had he been in the E.R.P. with you? A. In the E.R.P.?

S. M. 1342

Q. Yes. A. Yes.

Q. What capacity do you know, what was his job there? A. He was our delegate.

Q. Your delegate? A. Yes.

Q. All right, and who else was in the supervisor's office outside of Mr. Martini and your crew? A. Mr. Sutton.

Q. Who is Mr. Sutton? A. He is also a delegate from Jamaica.

Q. A delegate of the E.R.P.? A. Yes.

Q. Mr. Martini was not a delegate from the Jamaica
3395 bureau? A. No, he was Elmhurst.

Q. Anyone else? A. No.

Q. Who was your supervisor? A. Mr. Connelly.

Q. What's his first name? A. James Connelly.

Q. Was he in the office? A. He was, there was a partition between where he was and we were.

S. M. 1343

Q. Was it your office he was in? A. Yes.

Q. His regular office? A. Yes.

Q. And while you all were in his office, where was he? A. He was outside of the partition. It is a glass parti-
3396 tion in between the two.

Q. Could he see through? A. Oh, yes.

Q. What was he doing? A. That I don't know.

Q. Was he alone? A. No, no, he was in the room where all the clerks were.

Q. In other words he stepped out of his office to let it be used by you people? A. That's right.

Q. Was he in the office when you first walked in? A. Was he in the office when we first walked in?

Q. Yes. A. No, he was outside the partition.

Q. Do you know whether or not he was in the office with Mr. Martini before you all walked in? A. I don't know.

3397

Q. Was Mr. Martini in the office alone before you all walked in? A. He was with Mr. Sutton.

S. M. 1344

Q. Do you know whether Mr. Conley was with the two of them when you walked in alone? A. I don't know.

Q. That is only a matter of conclusion, is that right? A. Yes.

Q. What took place after you were called in? A. We were called into the office and Mr. Martini said to us, "Well," he says, "you understand that the company has recognized the I.B.E.W." So there was a little discussion and the discussion I can't remember at all, so I asked him if it was permitted to ask questions and he said yes. 3398

"Well," I says to him, "I think on my estimation," I said, "this is coercion and intimidation on the company's part to take us in behind closed doors to get us to sign up I.B.E.W. cards."

He agreed with me on that point. There was further discussion but I can't recall it.

Q. Well, do you know whether or not either one of these two men came out to your job at any time? A. Yes. 3399

Q. For the purpose of securing membership in the I.B.E.W.? A. Well, yes, Mr. Sutton come out on the job. Now, the date I don't know.

Q. Was it after the meeting of April 22nd? A. That's right.

S. M. 1345

Q. Yes. A. Driving a company's car, accompanied by another man which I don't know, and the other man I don't know. As I said. And the only two he spoke to on that day was a foreman of the gang.

3400

Q. What was his name? A. Hopt, Charlie Hopt.

Q. Hopt? A. Hopt, yes.

Q. All right. A. Another man was with him in the car which I didn't know. He spoke to the foreman of the gang and also to the chauffeur but he didn't approach none of the other men at all in the gang.

Q. What took place? A. That I don't know, what took place between them.

Q. All you know is that Mr. Sutton came out in a company car and spoke with the foreman and chauf-

3401 feurs? A. That's right.

Q. Well, had he ever done that before, to your knowledge? A. Not to my knowledge.

Q. Did he do it at any time afterwards? A. Yes, once again.

Q. When? A. The date I can't remember but it was

S. M. 1346

within a couple of weeks afterwards he come out again.

Q. What did he do then, do you know? A. He also spoke to the foreman and the chauffeur got the constitution of the I.B.E.W. off of him.

3402 Q. The chauffeur what? A. The chauffeur on the truck.

Q. Yes. A. Vande Water is his name.

Q. Yes. A. And he got a constitution of the I.B.E.W. off Mr. Sutton.

Q. Yes. A. He was also accompanied by another man which I was told was Mr. Turner.

Q. Well— A. This Mr. Turner, I think was a delegate also in Jamaica.

Q. Did your foreman ever speak with you about Sutton's visits? A. No, he never spoke to us about his visits.

Q. Did you ever speak with the foreman about the

visits? A. No, all that he said to us was one morning as we were working, he said, "Did youse sign up yet?"

Q. All that he asked you— A. Yes, we signed up.

Q. Was it before or after these visits from Mr. Sutton? A. After those visits.

S. M. 1347

Q. Did he ask you just once? A. Yes, just once.

Q. After the first or second visit? A. After the second visit.

3404

Q. Did you ask him whether or not he was securing membership? A. No, I didn't ask him.

Q. Did he volunteer a statement to you? A. No.

Q. Concerning it? A. No, he just asked us if we signed up and I said I did not, that I was talking for myself and I couldn't speak for anybody else.

Q. He didn't make any statement about the percentages of men that he had secured for the I.B.E.W.? A. No, no.

Q. That's all.

CROSS EXAMINATION:

3405

Q. (By Judge Ransom) Was your work in the overhead bureau? A. Lineman.

Q. Now, what grade lineman are you? A. First class lineman.

Q. And you are in the Elmhurst District? A. That's right.

Q. Were you a member of the Brotherhood of Utility Employees? A. Yes.

S. M. 1348

Q. When did you join that? A. In 1935, spring of 1935.

Mr. Moscovitz: Judge, may I ask him one question?

3406 *Terrence McGowan—For N.L.R.B.—Cross*

Judge Ransom: Certainly.

Mr. Moscovitz: You have been talking about membership in the E.R.P. Were you ever a member of the plan, what is commonly known as the company plan?

The Witness: Yes, the company plan.

Mr. Moscovitz: Is that what you meant at that time?

The Witness: Yes.

Judge Ransom: Is that all, Mr. Moscovitz?

3407 Mr. Moscovitz: Yes, thank you very much.

Q. (By Judge Ransom) And you were in the Brotherhood Local until it became an I.B.E.W. local? A. That's right.

Q. Then you were in this I.B.E.W. local until it became a C.I.O. local? A. That's right.

Q. Now, you spoke of being a steward under the E.R.P., the Employees Representative Plan, and that you collected dues. Who elected— A. Not under the E.R.P. I made a mistake there.

Q. I thought you must be mistaken. A. That was in the Brotherhood of Utility Workers.

3408 Q. You were a steward in the Brotherhood? A. That's right.

S. M. 1349

Q. Local union? A. That's all.

Q. And you collected dues in that capacity? A. That's right.

Q. And you never collected dues, nor anyone else under this Employee Representation Plan? A. No, no, no.

Q. Did you hold any office under the E.R.P.? A. No.

Q. But you voted as an employee in the choice of delegates? A. Yes.

Q. There wasn't any such office as steward under the E.R.P., was there, no office or steward or any system of collecting dues under the E.R.P.? A. May I get the question?

Q. I say there was no office of steward under the E.R.P.? A. No office as steward?

Q. Yes. A. Under the E.R.P?

Q. Yes. A. Well, I don't know, I couldn't say if there was an office or not.

Q. This day that Mr. Martini and Mr. Sutton asked you into what was the office used by Mr. Conley, was that 3410

S. M. 1350

a rainy day, do you remember? A. No.

Q. It wasn't? Are you sure about that? A. Well, the morning was raining, but it cleared up then.

Q. And this took place during the morning? A. Between the hours of eight and twelve, yes.

Q. And you and other linemen were around there at the district office? A. Yes.

Q. You hadn't gone out on the job on account of the weather? A. At that time it wasn't raining because—

Q. I am asking you whether at that time you had not gone out to work as a lineman? A. Oh, no, no. 3411

Q. On rainy days, you don't go out until the weather clears? A. That's right, unless it is an emergency.

Q. Now, Mr. Martini is a member of the I.B.E.W., is he not? A. Of the I.B.E.W.?

Q. Yes. A. Well, yes, I guess he is, as far as I know.

Q. And Mr. Sutton? A. Yes.

Q. The foreman of your gang. You said his name was Hopt? A. Yes.

Q. Hopt? A. H-o-p-t, I think.

S. M. 1351

Q. Do you know whether he was and is a member of the I.B.E.W.? A. That I don't know.

3412 *Franklin De Lude—For N.L.R.B.—Direct*

Q. And you joined the C.I.O. in March of 1937? A. That's right.

Q. How long had you been employed as a lineman in the Elmhurst district? A. I was employed in 1936.

Q. And you have been a lineman in that district ever since? A. Well, no, I wasn't a lineman when I got pushed out, you see.

Q. When did you become a lineman? A. Well, in 1928 I became a lineman.

Q. That's all.

3413 Trial Examiner Gates: We will take a short recess.

(Whereupon a short recess was taken.)

After Recess

Trial Examiner Gates: Proceed.

Mr. Moscovitz: I will call Mr. DeLude.

FRANKLIN DE LUDE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

3414 *Direct Examination:*

Q. (By Mr. Moscovitz) Where do you live, Mr. De Lude? A. 30-41 37th Street, Astoria.

Q. Are you employed at the present time?

Q. Where? A. Consolidated Edison Company of New York, Incorporated, at 4 Irving Place.

Q. What work do you do? A. I am in the distribution engineering bureau of the electrical engineering department and my work concerns the Manhattan distribution, secondary work, laying out of services, electrical services.

Q. Are you a member of any labor organization? A. Yes, I am a member of the Independent Gas and Electric Union.

Q. When did you become a member of it? A. The precise date I could not say, I should say about the middle of May.

Q. 1937? A. Yes, sir.

Q. Before that, were you a member of the E.R.P.? A. What is that?

Q. The Employees Representation Plan? A. Yes.

Q. Did you hold any office in it? A. Not this year 3416
but the first year it came into being I was a bureau councilman, chairman.

Q. You are familiar with the fact that on or about April 19, 1937, there appeared a public announcement

S. M. 1353

that Mr. Carlisle had recognized the I.B.E.W.? A. Yes, sir.

Q. After that statement was made do you know whether or not any of the supervisory employees in your department were engaged in the circularization of I.B.E.W. application cards? A. Yes, sir. 3417

Q. Do you recall when? A. Well, for about three days following that announcement there were I.B.E.W. professional organizers in the office in which I am employed on the 7th floor.

Q. Do you know their names? A. Sir?

Q. Do you recall their names? A. No, sir.

Q. How did you know they were professional organizers? A. Well, they said they were, there was no question about it, they came in and were given desk space there with several vacant desks so no one had to relinquish his desk for them, there was one man for two days and then I think two men for the third day and

3418 *Franklin De Lude—For N.L.R.B.—Direct*

following that, I might say that there was no success in getting members for the I.B.E.W., using those methods, so those organizers were withdrawn and cards were distributed, the yellow I.B.E.W. membership cards were distributed by men in supervisory positions.

Judge Ransom: I move to strike out the state-

S. M. 1354

ment as wholly in the nature of a conclusion, the men are not identified.

3419 Trial Examiner Gates: It may be stricken unless the names are given and indications of duties.

Mr. Moscovitz: You are referring to the names of the men referred to by this witness as professional organizers, or the supervisory employees.

Judge Ransom: Supervisory positions.

Mr. Moscovitz: Yes, sir.

Q. (By Mr. Moscovitz) Who are the supervisory employees? A. Mr. M. Herman.

Q. What is his job? A. He is an assistant engineer, he is unassigned on the chart, the organization chart, but he is in a supervisory capacity.

3420 Q. Why do you say that? A. Well, I know.

Q. Does he have any men under him? A. Yes, sir. He is, I should say the second in line in that bureau.

Q. How many men are under him? A. Well, I would have to guess, I couldn't say.

Q. Well, what is your best approximation? A. Well, there were 200 men in the bureau, whether it could be said they came definitely under him, I can't state.

S. M. 1355

Q. But he is— A. He is in a senior position, perhaps second in line in that bureau.

3421

Q. I see. Who are the others? A. You mean in distributing the cards?

Q. Yes, the supervisory? A. Mr. J. O'Dyer, he had the title of assistant engineer. I don't know the rest of his title, and he gave out cards and instructed his men that it was what the company wanted and added certain impetus to the movement. Following that—shall I continue or do you wish to ask another question?

Q. Go right ahead. A. The mere distribution of cards convinced a certain number of the more timid—

3422

Judge Ransom: I move to strike that statement out as purely argumentative and conclusory.

Mr. Moscovitz: Well, I will withdraw—I have nothing to withdraw, but let me ask you some questions.

Trial Examiner Gates: Well—

Judge Ransom: It is stricken.

Trial Examiner Gates: It may be stricken.

Mr. Moscovitz: Yes.

Q. (By Mr. Moscovitz) You saw these men distributing these cards, is that right? A. Yes, sir.

Q. You also saw these men whom you refer to as

3423

S. M. 1356

professional organizers? A. Yes.

Q. At the desks? A. That's right.

Q. Distributing the cards? A. No, sir, they just came in and sat there and spoke with a few men at a time, the first day after Mr. Carlisle's announcement there were perhaps 40 or 50 people gathered around this one organizer on company time, that is during working hours for perhaps half an hour or so at a time. The crowd would keep disbursing and gathering again as new people came in.

3424 *Franklin De Lude—For N.L.R.B.—Direct*

Q. How long did this continue, would you say, three days? A. I estimate it would be three days.

Q. And who would these men get to the desks; would they be called over, that is, how would they get there, would they be called by the organizers or would they be sent to the organizers? A. They weren't sent over, considering the things that were happening, people just gravitated to them.

Q. And was all this done in the presence of foremen or supervisory employees? A. In the presence, you
3425 mean, were they present in the room?

Q. Yes, A. Who?

Q. Well, all the men in the supervisory position in the room?

S. M. 1357

Judge Ransom: I move to strike this out, the persons are wholly unidentified.

Examiner Gates: Did you give your answer?

The Witness: No, sir, I can easily identify them. I will have to say that in this room there are bureaus of two departments, and in the one
3426 department the man in supervisory positions would be Mr. R. Amson.

Q. (By Mr. Moscovitz) Give the titles if you know them? A. Mr. Amson is supervisor of the bureau, his actual title may be division engineer, I wouldn't swear to it, and Mr. Herman whom I mentioned before, Mr. T. F. Ryan, and well, that is really the top supervisory positions, the others are under them. That is, in one department. And in the other department in the same room Mr. A. R. Gruer and perhaps ten men in supervisory positions under him whom I can name if you wish me to, merely that they are present, that is all I am talking about.

3427

Q. That is right. A. Mr. J. Lueillis, Mr. Fuller, C. J. Barker, A. J. Bison, is that enough?

Q. That is enough. A. I am merely certifying their presence.

Trial Examiner Gates: Motion to strike is denied.

Judge Ransom: Exception.

Mr. Moscovitz: Sir?

S. M. 1358

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Trial Examiner Gates: The motion to strike previously made is still on the record, it is denied.

Mr. Moscovitz: I see.

Q. (By Mr. Moscovitz) Did you at any time object to this distribution of cards or intervene when cards were being distributed to any of the employees in the department by supervisory employees? A. No, I never objected to the passing out of cards, it came too early after developments for me to know just what I could do and could not do.

Q. Did you ever intervene when cards were being distributed? Or when these conferences were being 3429
held by supervisory employees and other employees? A. Yes, I did.

Q. Do you recall when that was? A. Well, the most specific case I can mention was on May 19th.

Q. This year? A. Yes, sir, of this year.

Q. Yes. A. The reason I place the date is that it was the same day that endeavored to have coercion stopped in the department.

Judge Ransom: I move to strike out the witness' conclusion about what he endeavored to have stopped.

3430 Trial Examiner Gates: It may be stricken unless he states what he did and what was said.

S. M. 1359

The Witness: Well, I can answer that easily, I had become acquainted with other gentlemen who were endeavoring to form an independent union to combat this I.B.E.W. business and I personally was working and could not take steps to see the supervisor or superintendent.

3431 I did speak to Mr. Harry Crowell, with whom I had become associated, and requested that he speak to Mr. Schofield, L. A. Schofield, general superintendent in the department of service inspection and records and I told him that the men in that department were being subjected to a more intense coercion than I knew of elsewhere and requested that he see Mr. Schofield, which he did.

On May 19th, in the morning, he called me and informed me also in the morning that he had spoken to Mr. Schofield.

Judge Ransom: I object to this. This is
3432 purely hearsay.

Mr. Crowell has been a witness. I move to strike out the whole statement of the witness relative to his conversations with Crowell or any report of anything that Mr. Crowell made to the witness.

Trial Examiner Gates: The record may so far stand.

Judge Ransom: Exception.

The Witness: Shall I continue?

Mr. Moscovitz: Yes.

A. He informed me that he had had conversations with

S. M. 1360

Mr. Schofield on the subject and Mr. Schofield had informed him that men under him were not supposed to be circularizing, endeavoring to secure I.B.E.W. membership, but that they had given cards so that men could join in the event that they wanted to. That was the morning of May 19th. In the afternoon of May 19th, I went into another room which also housed part of the same department on the same floor and there I saw Mr. J. O'Dwyer.

Q. Who was Mr. J. O'Dwyer? A. He is assistant 3434
engineer in a supervisory position.

Q. What is he in charge of?

Judge Ransom: He is the same man he has testified before.

The Witness: I don't know, but I don't recall. I did know. It may be material to the schedules, it may not.

Q. (By Mr. Moscovitz) Is he in charge of the schedules group? A. Yes, sir, that would be it.

Q. Yes. A. And then it was—

Q. What was he doing when you saw him? A. Mr. 3435
Kurt P. Damm, an employee, he was endeavoring to convince him that the I.B.E.W. was the correct thing to join.

Judge Ransom: I move to strike out the witness' statement as purely argumentative and a conclusion.

Trial Examiner Gates: Did you hear the conversation?

The Witness: Yes, sir.

S. M. 1361

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

The Witness: I stood behind the gentleman until I heard a few sentences to be certain.

Q. (By Mr. Moscovitz) What did he say, what was he saying? A. Well, I could not give you his precise words before I spoke, but I can give you the substance of the conversation that I had with him.

Q. Well, what did you hear him say that made you have a conversation with him? A. He was definitely endeavoring to convince this man to join the I.B.E.W.

Q. Well, what did you do? A. I intervened, and I told him he was not supposed to be doing that and that Mr. Schofield had said that morning that there would be no more pushing the I.B.E.W. and I suggested that he call Mr. Schofield. He responsed by saying that it was none of my business. He did not have to take orders from me, he said.

I said, "No, you certainly don't have to take orders from me, but I do suggest that you call Mr. Schofield and get the correct orders from him."

And then he said, "You mind your own business as I am minding mine."

And I said that that was not exactly minding his own

business and he said, "Well, I am taking orders from Mr. Schofield, in this case, not from you."

And then I said, "I don't think you meant to tell me that, but you better call Mr. Schofield," and that concludes that conversation. I may say this is not memory exactly because I wrote down the subject of that conversation immediately following.

Q. Do you know Mr. Herman? A. Sir?

Q. Do you know Mr. Herman? A. Yes, sir.

Q. Who is he? A. Mr. M. Herrman?

Q. Is it M. Herman? A. M. Herman, yes, sir.

Q. Yes. A. Yes, he is the assistant engineer with no assigned duties on the organization chart for that department.

Q. When you say "no assigned duties on the organization chart" what does that mean? A. Well, not so long ago there was a departmental split up in which what was formerly the distribution engineering department became in part the department of service inspection and records under Mr. L. A. Schofield and in part 3440
the electrical engineering department under Mr. Fair-

S. M. 1363

man, so I am not familiar with every man's duty, because that split was fairly recent.

Q. Well, is he what you would call a supervisory employee? A. Yes he is without question.

Q. And why do you call him that? A. Well, his duties are all of a supervisory nature.

Q. I see. Does he have men working under him? A. Yes, sir.

Q. And whose work he directs? A. Yes, sir. 3441

Q. Do you know approximately how many he has under him? A. Well, I stated earlier that I could not put a definite number but I presume it would be around 200, I further stated that I could not definitely say that they were under him directly.

Q. All right, now he is the man to whom you have already referred as distributing cards after the professional organizers were through, is that right? A. Yes, sir, and if you care to I can give you the substance of the conversation I had with him on the first day.

Q. What was it? A. Well, he was passing my desk and I asked if he would stop a moment and he had

3442 *Franklin De Lude—For N.L.R.B.—Direct*

earlier brought up some cards and given a pile to Mr. Barker and to Mr. O'Dwyer, and these gentlemen had circulated the cards. I asked Mr. Herman why he

S. M. 1364

brought the cards up and his answer was, which I will presently state, in substance, it was most evasive.

Judge Ransom: I move to strike out the witness' answer, or summation, characterization, the witness should state what the answers were.

3443 Trial Examiner Gates: Yes, it will be stricken.

Q. (By Mr. Moscovitz) What did he say? A. Well, he said, out of the goodness of his heart he picked them up from a desk on the 6th floor and brought them up to give to people in case they wanted them.

Q. What did you say to that? A. Sir?

Q. What did you say to that? A. Well, I naturally laughed, ridiculed it.

Q. What did he say? A. Well, he accepted the ridicule and bowed out as well as he could and by that time several people had collected around him.

3444 Q. Did you notice whether or not any of the former members of the department council of the E.R.P. were engaged in the distribution of these cards? A. I know definitely that they were.

Q. Who was the chairman? A. The chairman?

S. M. 1365

Q. Of the formerly departmental council? A. A Mr. E. Flannagan.

Q. And where is he located? A. He is on the 6th floor.

Q. What work does he do? A. You mean his position?

Q. Yes. A. Why, I frankly don't know, along clerical lines in the department of service inspection.

Q. You don't know whether or not he was distributing these cards during his working hours? A. I do not know that he was definitely distributing cards during working hours, but I do know that he was most certainly signing up members during working hours.

Q. Did you see him do it? A. Yes.

Q. Where? A. What?

Q. Where? A. In the room on the 6th and 7th floor.

Q. How many days did you see him engaged in that 3446
activity? A. I can only say that it stretched over a period of time which I might estimate at two weeks.

Q. Yes. A. Yes.

Q. And during that two weeks period did you talk

with him? A. Yes.

Q. About this activity? A. I did.

Q. What conversation did you have with him? A. Well, he told me the one time that he had been transferred from the payroll of the Consolidated Edison Company to the payroll of the I.B.E.W. and I said if that is 3447
the case why are you working on company property during the working hours of the men here? And he assured me that it was quite all right, that he was doing that.

Q. Is he still employed by the company? A. I understand that he has been restored to the payroll of the Consolidated Edison.

Q. So he is still around? A. Yes.

Q. When you say you understand that he has been restored to the payroll of the Consolidated Edison Company— A. I have been told that.

Q. I see. Do you know when he was restored?

Judge Ransom: I object and move to strike

out the previous answer as purely hearsay and in no way evidence—

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Do you know when it was

S. M. 1367

that he was restored? A. No, I cannot give you such a date.

3449 Q. By whom were you told? A. I don't recall.

Q. Has this activity to which you have referred continued, to your knowledge? A. Well, not to such an extent as it prevailed originally, for the simple reason—

Judge Ransom: I move to strike out his statement of reasons, whether they are simple or not.

Trial Examiner Gates: It may be stricken.

A. For the reason that their endeavors in the beginning were quite successful in securing a majority of members in the I.B.E.W.

Q. (By Mr. Moscovitz) When you say "their" endeavors, who are you referring to? A. The endeavors
3450 of any individuals who were working along those lines.

Q. Supervisory employees and others—

Judge Ransom: I object to such leading of the witness.

Trial Examiner Gates: Objection sustained.

Mr. Moscovitz: Well, I think probably the record will speak for itself.

Judge Ransom: I hope so.

Q. (By Mr. Moscovitz) You are still a member of

S. M. 1368

the gas workers Union; is that right? A. Independent Gas and Electric Union.

Q. Yes. A. Yes.

Mr. Moscovitz: That's all.

CROSS EXAMINATION:

Q. (By Judge Ransom) When did you become a member of that union? A. I said I presumed it was about the middle of May. I don't remember the exact date.

Q. You were opposed to any outside or international union among the employees? A. I was opposed to the 3452
manner in which an outside union was brought in.

Q. Well, were you in favor of an outside union or opposed to it? A. I am opposed to an outside union in the Consolidated Edison Corporation for reasons which I will bring forth if you care to hear them.

Q. What are those reasons?

Mr. Moscovitz: I don't see, Mr. Examiner, that it is either important or relevant or in any way necessary for the proper consideration of the issues here that this witness give his views on why he is not concerned about outside affiliation.

Judge Ransom: I think I am entitled to de- 3453

S. M. 1369

velop the point of view and the animus of this witness on matters on which he has testified.

Mr. Moscovitz: I think it would be more important to have the point of view of the company as to why they want an outside union rather than the testimony of this witness on his own views.

Judge Ransom: The company did not enact the Doyle-Neustein Bill.

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Trial Examiner Gates: He may continue.

Mr. Moscovitz: Exception.

A. I feel that an organization of 40,000 people need not necessarily be governed by an outside organization. I feel that such a body of people can form from their own ranks exclusively a collective bargaining organization which would be equally effective as an outside union. The idea that 40,000 people should be governed by outsiders, I consider wholly ridiculous. An independent union would provide government of the employees for their own benefits, suited to their peculiar needs, would
3455 have no interference from national organization headquarters, which must be sustained and rather expensively, to the extent of some quarter of a million dollars a year.

I feel that such payment constitutes nothing but tribute, and while I admit the effectiveness of international organization in other fields, I feel that the Consolidated Edison Company has rather peculiar problems and there is not enough to be done to warrant bringing in an outside organization. Will that suffice?

Q. And at all times you have testified about, your actions have been in pursuance of that point of view?
3456 A. Yes, sir.

Q. And those are still your views? A. Yes, they are.

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Q. Do you object to having the I.B.E.W. bargain collectively for such employees as are members of its locals?

Mr. Moscovitz: Mr. Examiner, what difference does it make as to whether or not this particular individual, who is one of 40,000, has a philosophy which is inconsistent or consistent with representation of certain employees by an outside organization?

Judge Ransom: I am entitled to show the point of view and animus on which the witness testified.

A. Would you repeat the question?

Q. (By Mr. Ransom) I will restate it. Do you object to having the I.B.E.W. bargain collectively for such of the employees of the Consolidated Edison Company as are members of the I.B.E.W.? A. I would not object to having such a body bargain for those members who voluntarily joined it. I most certainly would object to their representing a group who were coerced and intimated into their ranks against their will. 3458

Q. And so far as I.B.E.W. represents persons who have joined voluntarily, you have no objection to this as a collective bargaining agency? A. To that limited group, no.

Q. Now, your department is now called what? A. Electrical Engineering Department.

Q. And as of what date did this reorganization or

set-up which you speak of take place? A. That I cannot say. 3459

Q. Well, can you give the month? A. No, I cannot. Perhaps Mr. Rowe can.

Q. Was it this year? A. I believe it was this year.

Q. Well— A. Early this year.

Q. By that you mean in February or March? A. Well, I have already stated that I cannot give a time, sir, and I cannot enlarge on that.

Q. Was it before? A. Yes, and it may have been last Fall.

Q. The men whom you referred to as professional organizers, who were seated at vacant desks in your room,—do you know whether they were or had been employees of the company? A. I do not know that.

3460 Q. And you cannot give any of their names? A. No, sir, I can merely say that—

Q. Can you give any of their names? A. No.

Q. Do you know whether they were or were not members of the I.B.E.W.? You either know or you don't. You can state that without argument, I assume? A. Well, I don't know that they were members.

S. M. 1373

3461 Q. That is the answer. Now, how large was this room your bureau is in? A. It is—it extends about two-thirds of the distance from Irving Place to Third Avenue, which I would estimate at 400 feet, that is the main portion of it, and then it also extends north on Irving Place for perhaps 150 or 200 feet. The width varies, and I should say perhaps it was an average of perhaps 150 feet in width. It is a very large room.

Q. What are the two bureaus in that room? A. I said members of two departments are in the room. The two departments are service inspection records and the electrical and engineering department.

Q. This is on what floor? A. The seventh floor, new
3462 building. All my testimony did not concern that room.

Q. Mr. Dwyer— A. Mr. O'Dwyer—you—

Q. O'Dwyer—do you know whether he was and is a member of the I.B.E.W.? I am asking you whether you know. A. Well, I will have to qualify my answer.

Q. Well, you either know or you don't know. A. I don't know.

Q. Mr. M. Herman, do you know whether he is or is not a member of the I.B.E.W.?

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The Witness: Sir, may I qualify my answer on that? It is necessary.

Judge Ransom: I ask the witness to answer whether he knows.

A. Well, there is an element there that has to be mentioned.

Trial Examiner Gates: You may answer the question as put.

Q. (By Mr. Ransom) You may want to give some argument in support of your answer.
A. No, I don't—

3464

Trial Examiner Gates: Just a moment. Answer the question as put.

A. The question cannot be answered yes or no. It must be explained.

Q. (By Mr. Ransom) You spoke of Mr. Fuller, Mr. Barker and Mr. Ellis. A. That is Mr. de Lelis.

Q. What? A. I said de Lelis.

Q. Well, then, Mr. de Lelis. Do you know whether they are members, were and are members of the I.B.E.W.? A. The same answer pertains to that that I gave before. I don't see why I cannot state it. It is very simple and would clarify this considerably. 3465

Mr. Moscovitz: You answer Judge Ransom's

questions and then we will see if we cannot clarify it after he is finished.

The Witness: The questions, sir, are pointless.

Q. (By Mr. Ransom) Are you an engineer? A. No, sir.

Q. What are you? A. What am I? I am doing the work of an engineering assistant. I have certain—

3466 Q. What is your title? A. Engineering assistant, first grade.

Q. And in your opinion, it is pointless if I ask you whether you know whether a man is or is not a member of the I.B.E.W.? A. Not a man—certain individuals.

Q. Well, individuals. A. I will gladly answer if you will allow me to clarify it.

Q. What argument do you want to make about it? A. None whatsoever, merely to say—

Q. Do you know—let's take Mr. O'Dwyer. Do you
3467 know— A. They are considered in supervisory positions and ineligible to join.

Q. I ask you if you knew whether he was or was not a member. Do you say he is not a member? A. They are not members because they feel they are beyond the membership.

Judge Ransom: I move to strike out the

S. M. 1376

witness' argument on the matter. I am asking him simply for his knowledge.

3468 Trial Examiner Gates: It may stand, but I will ask you to answer it.

A. I don't know if any of these gentlemen in supervisory positions belong to the I.B.E.W.

Q. (By Mr. Ransom) That applies to all the men I have asked you about? A. All the men in supervisory positions.

Q. And you don't want to answer any more frankly? A. Sir?

Q. You don't wish to answer the question any more definitely? A. You said "frankly."

Q. Yes. A. I am endeavoring to be frank. You don't allow me to.

3469

Q. Well, now, has Mr. O'Dwyer ever told you whether he was a member or not? He has? Yes or no. A. No, he has not.

Q. And has Mr. Herman ever told you whether he was a member or not? A. No, he has not.

Q. And has Mr. Fuller or Mr. Barker ever told you whether they were members or not? A. Mr. Fuller is definitely not a member, and may I make a correction on the previous statement, if you please? Mr. Fuller may not have been present when this original union

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S. M. 1377

activity developed. I believe he might have been on jury duty at that time.

Q. You didn't suggest that any of these men were taking any part in what you described as activity. A. Well, when I named them I merely certified to their presence.

Q. They were in the room? A. They were in the room. I didn't say—

Q. As far as you observed, they were going about their work? A. By no means. They would have to be qualified individually along those lines. Certain of 3471
them were going about their work and certain of them were not.

Q. How about Mr. Fuller? Was he in the room? A. Mr. Fuller is my own personal superior and is very much against the I.B.E.W. and would not join himself. He informed his own superior that neither he nor the men that worked for him had any intention of joining the I.B.E.W.—

Judge Ransom: I move to strike out the witness's entire volunteered argument. I asked him a simple question, calling for a yes or no answer,

3472 and the witness wants to make a speech about it. I move to strike. I asked him whether Mr. Fuller was in the room. He either was or was not. It has nothing to do with the witness's elaborate argument.

Trial Examiner Gates: Read the answer.

(Answer read.)

S. M. 1373

3473 Trial Examiner Gates: The answer may be stricken.

Q. (By Mr. Ransom) I ask you, if you can answer without argument, was Mr. Fuller in the room? A. I stated not so long ago, sir, that Mr. Fuller may have been on jury duty. I couldn't definitely say that he was in the room. I mentioned it as a possible correction.

Q. Mr. Barker—was he in the room? A. Yes.

Q. Was he at his desk in the room? A. Yes.

Q. And Mr. de Lelis, was he in the room? A. Mr. de Lelis?

Q. De Lelis? A. I couldn't guarantee his presence. Normally, he would be there. He was certainly, some

3474 of the time.

Q. Engaged in his usual work? A. Which one?

Q. Mr. de Lelis? A. Yes, engaged in his usual work.

Q. I think that concludes three of the about ten men you mentioned. A. Concludes?

Q. Three of the ten, you said there were ten men who had some supervisory duties who were in the room. Were they at their desks in the various parts of the

S. M. 1379

room? A. I could not say definitely whether they were at their desks or not. Their normal duties would have them in the room at least some of the time.

3475

Q. Who is Mr. T. F. Ryan? You mentioned his name. A. I believe his title is assistant divisional engineer. He is in the department of service inspection of records and personally over a considerable group, perhaps.

Q. Do you have personal knowledge of whether he is or is not a member of the I.B.E.W.? A. He couldn't be a member of the I.B.E.W.

Q. I am just asking you whether you knew, have you any personal knowledge whether he is or not? A. No, sir.

3476

Q. You mentioned Mr. Flanagan; do you know whether he is and was a member of the I.B.E.W.? A. Yes, sir, he was; he is a member of their executive board, I believe, of Local 829, I believe.

Judge Ransom: That's all.

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) These supervisory employees that you and Judge Ransom have just been talking about, you have testified that you don't know whether they are members of the I.B.E.W., is that right?

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Judge Ransom: I object to the question unless it is related to specific men, it is purely a characterization as it stands.

S. M. 1380

Mr. Moscovitz: Well, the gentlemen known as Mr. O'Dwyer, Mr. Herman, Mr. Fuller, you might except Mr. Fuller for the time being, well, Mr. Fuller, Mr. Barker, and Mr. Flanagan?

The Witness: Well, that is not in the list of supervisory positions.

Q. (By Mr. Moscovitz) They are not? A. Not Mr. Flanagan.

3478 *Franklin De Lude—For N.L.R.B.—Redirect*

Q. The others are? A. Yes.

Q. You have testified these persons are not members of the I.B.E.W., is that right?

Judge Ransom: I object to that, that is an inaccurate statement, he said he didn't know.

Q. (By Mr. Moscovitz) You don't know whether they are members of the I.B.E.W., isn't that right, that has been your testimony so far? A. That has been my testimony.

3479 Judge Ransom: Just a moment. I will let you resume your argument in a moment.

The Witness: Pardon me.

Judge Ransom: I object to that on the ground that all the witness has attempted to do in his testimony is to argue his interpretation of the constitution and the by-laws of the labor organi-

S. M. 1381

zation to which he does not belong and to which he says he is violently against. Now, the question of whether these men are eligible is surely not a

3480 question for this witness to settle on the stand, and he says he does not know whether in fact they are or are not members and, of course, even less can he know whether they are eligible for membership, it might have been enough for him to interpret the constitution and by-laws of his own labor organization.

Trial Examiner Gates: Has the question been finished?

Mr. Moscovitz: I just thought it was summing up things here for Judge Ransom and the witness.

Judge Ransom: Well, the witness is summing them up, you shouldn't interrupt.

Trial Examiner Gates: The question may be answered.

The Witness: What was the question?

(Reporter repeated the pending question, as follows:

"Q. You have testified these persons are not members of the I.B.E.W., is that right?")

The Witness: That is only right in one sense, I said I knew Mr. Fuller was not a member of the I.B.E.W. 3482

Q. (By Mr. Moscovitz) As far as the rest of them are concerned, you just don't know, is that right? A. That has been the gist of my testimony up to now.

Q. Yes, but you would like to qualify that? A. I certainly would.

S. M. 1382

Q. Now, in what respects—

Judge Ransom: I object to the witness attempting to interpret the constitution of the I.B.E.W., which he does not belong to and to which he violently objects. 3483

Trial Examiner Gates: I suggest that the qualification be gotten by the question and the answer, the objection is overruled.

Judge Ransom: Exception.

The Witness: I am not attempting to interpret any constitution.

Trial Examiner Gates: Just a moment, please. Answer the question.

The Witness: These gentlemen are presumed to be ineligible for membership because they held positions of a supervisory nature.

3484 *Franklin De Lude—For N.L.R.B.—Redirect*

Judge Ransom: I object to the witness's conclusion of law and move to strike out his answer as wholly argumentative and self-serving, and merely a conclusion.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Now, you don't—strike that out. Judge Ransom has developed what turned out to be a very interesting philosophy of your conception of this labor problem. Now, you don't object, do you, to
3485 men becoming members of any labor organizations that

S. M. 1383

they want to become members of, do you? A. No, sir.

Q. Whether it is the I.B.E.W. or C.I.O. or the X.Y.Z. or anything else, is that right? A. If they consider it intelligently, I should think they would be allowed to join the one they wish to join.

Q. Your objection is only to the company forcing these men into an organization that the company is desirous of having them become a part of, is that right? A. That is correct.

3486 Q. And that is why you registered disapproval when you intervened in the conversation between an employee and a supervisory employee about which you have already testified? A. That is correct.

Q. And that is why you object to the supervisory employees circulating and distributing I.B.E.W. cards on company time? A. Yes, sir.

Q. On company property, isn't that so? A. That is correct, or I may add any other employee.

Mr. Moscovitz: All right, that is all.

Judge Ransom: That is all.

(Witness excused.)

Mr. Moscovitz: There is some difficulty about a witness I would like to put on, may we adjourn now until 1:30?

Trial Examiner Gates: We will take an adjournment until 1:30.

S. M. 1384

(Whereupon, a recess was taken at 12:20 o'clock p.m. until 1:30 o'clock of the same date.)

3488

AFTERNOON SESSION

Trial Examiner Gates: Proceed.

Mr. Moscovitz: I will call Mr. Chandley.

WILLIAM CHANDLEY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. Chandley? A. 72 Hick St., Brooklyn.

Q. You are employed by the Consolidated Edison 3489
Company? A. I beg your pardon, sir?

Q. You are employed at the present time? A. Consolidated Edison Company.

Q. What kind of work are you doing?

Judge Ransom: Is it Brooklyn Edison?

Q. (By Mr. Moscovitz) Are you employed by the Brooklyn Edison? A. Yes, Brooklyn Edison.

Q. How long have you worked for the company? A. Eleven years July 2nd, 11 years on May 2nd, I should say.

Q. What kind of work are you doing? A. Janitor.

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Q. Is that what you have been doing all those years for the company? A. Yes, with the exception of about six or seven months I have been meter reading.

Q. You have been meter reading the last six or seven months? A. I couldn't remember the year exactly, sir, but about seven months meter reading, otherwise I was janitor all the time.

Q. That is what you are doing now? A. That's what I am doing now.

Q. All right, are you a member of any labor organization at the present time? A. American Federation of Labor.

Q. Yes, is that the International Brotherhood of Electrical Workers? A. Yes, sir.

Q. Are you sure? A. Yes, sir.

Q. All right. A. I.B.E.W.

Q. I.B.E.W.? A. Yes.

Q. That's right, and what local do you belong to? A. I have so little interest in it I don't even know the name

S. M. 1386

of the local, I am in it and that is all and I don't care. I just pay my dues, I don't believe in any unions so far as that goes.

Q. I see, well, if you don't believe in any I.B.E.W., how do you come to be a member of it? A. Well, I just signed it, just as a matter of cooperating with the company.

Q. To cooperate with the company? A. Cooperate, yes.

Q. Tell us how you cooperated with the company by joining. A. Well, I was asked over to the office, to the superintendent's office.

Q. Where was that? A. That was the office.

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Q. Well, when was that? A. Several months ago, two or three months ago, a couple of months ago.

Q. April, 1937, would you say, or in May? A. I guess that's it, I forget now the date.

Q. April or May, can you be a little more specific? A. I can say April.

Q. About April of 1937? A. Yes.

Q. Would you say the latter part of April? A. Yes.

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3494

Q. Or the first part? A. The latter part.

Q. The latter part? A. Yes, sir.

Q. At whose office was it that you were called to? A. The superintendent's office.

Q. What is his name? A. Henderson.

Q. Henderson? A. Mr. Henderson.

Q. Is he your superintendent? A. Yes, sir.

Q. What took place when you went over there? A. He just asked if I would join and I said that I had not, he asked if I had joined—

Q. He asked if you had joined? A. Yes.

3495

Judge Ransom: He ought to tell who he had the talk with.

Q. (By Mr. Moscovitz) Who were you talking with? A. With the superintendent.

Q. With the superintendent? A. Yes, and the foreman sent me over to the superintendent.

Q. Who was the foreman that sent you over? A. Mr. Collins, John Collins.

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Q. What did the superintendent say to you after you got there? A. Well, he just looked at my card and said

I had not joined and I said, "No, I didn't believe in unions, and that stuff," so he advised me, well, he said if he was me he would join the American Federation of Labor, that was as far as he went.

Q. And did you join? A. I joined, sir.

Q. Did he give you the card? A. The card was signed anyhow, so I signed the card.

Q. He gave you the card, did he, to sign? A. I had a card with me but he gave me a clean one, I put it in my pocket.

3497 Q. Well, you had had a dirty card in your pocket and he gave you one to sign? A. Yes.

Q. And you had been carrying around this card for a few days? A. Yes, then he gave me a clean one, so the superintendent gave me the card that was signed, and he gave me the new one in lieu of the dirty one.

Q. Then you signed it? A. Yes, sir.

Q. You gave it to him, did you? A. Yes, sir.

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Q. Did you pay him your dues, too? A. I never paid my dues to him.

3498 Q. Whom did you pay your dues to? A. To the fellow that came along for it.

Q. How—do you know who it was? A. He is not one of the cleaners now, sir.

Q. He used to be a window cleaner, did he? A. The place is so big, I didn't see him. I knew he was a window cleaner, but I don't know if he is a window cleaner now.

Q. He came for the dues? A. The dues.

Q. What is he now? A. I suppose he is a window cleaner still. I don't know, I couldn't say for sure, sir.

Q. When was it that he came to you first, was it a few days after you had spoken with your superin-

tendent? A. Oh, he came two or three times, but I just paid him the last time he came. He came about three times, and the last time were the first dues I paid him.

Q. And you paid your dues to cooperate with the company, is that right? A. I imagine—

Q. Did you say you imagined that they want you to do so? Is that what you said? A. They seemed to be

S. M. 1390

in favor of it, sir, of our joining it. They don't say it to you, you know, not in that way, but that is the thought. 3500
I didn't want to join the C.I.O. or anything else. I didn't care for the C.I.O. or any union, as far as I am concerned.

Q. You didn't want to belong to the C.I.O. or the I.B.E.W.; is that right? A. I did not want to belong to any of them, sir.

Q. If your superintendent had not given you a card to sign, you would not have joined? A. I wouldn't have been in any of them.

Q. That is all.

CROSS EXAMINATION:

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Q. (By Mr. Ransom) Where do you work? A. Johnson St.

Q. Is it Johnson St. Building? A. 55 Johnson St.

Q. Is that one of the buildings of the Brooklyn Edison Company? A. Yes, sir.

Q. And what kind of a building is it? A. It is a research bureau as far as I can make out, engineering work, electrical engineering, and so on.

Q. How many janitors are there there? A. Three janitors and a foreman, sir, through the day, the day

S. M. 1391

time, and there is a night force on.

Q. Now, Mr. Henderson you say is foreman of the janitors or superintendent of the janitors? A. Superintendent.

Q. Where is his office? A. 380 Pearl St., sir, 380 Pearl St.

Q. And who is Mr. Collins? A. He is just a foreman, sir.

Q. A foreman of janitors? A. Foreman, yes, sir.

Q. Where does he work? A. He works in Johnson St., sir.

3503 Q. He is the head janitor in your building? A. Yes, sir.

Q. Day times? A. Day times, yes, sir.

Q. Does Mr. Collins belong to the I.B.E.W.; do you know? A. I don't know what he belongs to, sir.

Q. What is the name of this window cleaner who you say came for dues; do you know? A. What was that, sir?

Q. The name of the window cleaner that came for dues? A. I couldn't say, sir. Edward—I forget his name now, sir.

S. M. 1392

3504 Q. Does he belong to the I.B.E.W.? A. I don't know, sir.

Q. You don't know? A. No, sir.

Q. Who gave you the first card you had for the I.B.E.W.? A. (No response.)

Q. Well, if you don't remember, never mind. Well, the one you signed is the one you say Mr. Henderson gave you? A. Yes, sir. Mr. Hazzard, I think. I think Mr. Hazzard.

Q. Who is he? A. I think that was the fellow who gave it to me.

Q. Does he work in Johnson Street? A. Yes.

Q. His name was what? A. Hazzard.

Q. What? A. His name was Hazzard. He gave me the first one.

Q. That's all.

Mr. Moscovitz: Thank you very much. You need not wait any longer.

(Witness excused.)

Mr. Moscovitz: I will call Mr. O'Brien.

3506

WILLIAM F. O'BRIEN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

S. M. 1393

Q. (By Mr. Moscovitz) Where do you live? A. 10 West 96th St.

Q. New York City? A. New York City.

Q. By whom are you employed at the present time? A. I am employed by the Consolidated Edison Company. 3507

Q. What kind of work? A. Clerical work in the accounting department.

Q. What? A. Clerical work in the accounting department.

Q. How long? A. Seven years.

Q. Are you a member of the C.I.O.? A. I am a member of the independent union.

Q. Oh, that is the independent? A. Yes, an electric union.

Q. How long have you been a member of that organization? A. I have been a member for about three months.

3508 *William F. O'Brien—For N.L.R.B.—Direct*

Q. Do you hold office in it? A. Yes, I do, I am a member of the executive committee.

Q. Are you a member of the E.R.P.? A. E.R.A. was the plan under which the company maintained the company union, the Edison Company before the merger, the E.R.P. was the Gas Union, I was a member o fthe E.R.A.

Q. E.R.A.? A. Yes.

S. M. 1394

3509 Q. That's the employee representation association? A. That's right.

Q. Did you hold any office? A. I was the vice-chairman of the consumers' accounts council.

Q. Did you know Mr. William Ganley? A. I did, very well, yes, sir.

Q. Was he on the council with you? A. Mr. Ganley was on the general council, I was one of the lesser councils, I was on one of them.

Q. When you say you know very well, do you mean you used to work with him? A. Well, I mean I met him frequently down at the general council room and I know him from those meetings.

3510 Q. In your E.R.A. work? A. E.R.A. work, yes, sir.

Q. Do you know whether Mr. Ganley is still employed by the company? A. I don't know that for a fact, no, sir.

Q. Do you know whether or not while he was employed by the company he did any organizational work for the I.B.E.W.? A. Well, I do know while he was on the payroll of the company he maintained his office in the company union on the fourth floor, first, and about two or three weeks before the company announced, be-

S. M. 1395

fore Mr. Carlisle made his announcement of the recogni-

tion for the I.B.E.W., that the company union offices were moved and enlarged to enlarged quarters on the fourth floor and four phones were installed, and Mr. Ganley and members of the general council, after this had been done, were invited by Mr. Tracy to take part in the I.B.E.W. work, and at that time I could not tell whether Mr. Ganley was still being paid by the company or by the I.B.E.W., but I do know that he was on the twelfth floor doing organizational work, that is, speaking of the details, attending to the details, and who came in and was going out to the districts and reported to him 3512 with their cards and how much money they had collected.

Q. That's for the I.B.E.W.? A. The I.B.E.W., he did that for several days, although I knew he was probably in the same status as he was when working for the company, but doing no routine duties, he was working in the company union.

Q. And what was the period of time when he was working in these enlarged offices that had more telephones and so on? A. I would say he was there at least four weeks.

Q. From what period to what period? A. I imagine it was about two weeks before Mr. Carlisle announced 3513 that he had recognized the I.B.E.W. and for about two or three weeks after that that Mr. Ganley maintained

that, also, as I.B.E.W. headquarters.

Q. When was that, when did you last—strike that out. Does he still use that office? A. He does not.

Q. Who uses it now? A. I have no idea who uses it.

Q. Do you know when it was last used? A. So far as I know, about three days after the article about the independent union got into the New York Evening Sun, whatever date that was, I don't remember, I think about

three days after that article was in, the office was no longer generally used as headquarters for the I.B.E.W. or the old council which is now the I.B.E.W.

Q. You say that was two or three weeks after Mr. Carlisle's statement appeared? A. I imagine that's about it.

Q. Do you know whether or not council members of the E.R.A. were engaged with Mr. Ganley in this work during the period of time that you have specified? A. I know very definitely they were, I know the two people
3515 most intimately concerned with me in council work was the chairman of the same council of which I was vice-chairman, Thomas McGray was released from his routine duties and he did organizational work, that is, he was, he and the gentleman named, James Anello, who

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was a meter reader and councilman on the company union, were both released from their routine duties, were given what is known as the meter room on the tenth floor, which the meter readers used, but these are gentlemen who were out in the field during the day, this room was
3516 empty in the day time, of course, these two men held council in this room and under the permission of their supervisors they invited small groups of employees to the 20th floor into this room.

Q. Who was their supervisor?

Judge Ransom: I move to strike out that statement, that is purely hearsay.

Trial Examiner Gates: It may stand, if he states the basis for his knowledge.

Q. (By Mr. Moscovitz) Who was the supervisor? A. Mr. O'Callahan.

Q. How do you know about this? A. Because I worked nights.

Q. Yes. A. And I go to work at four o'clock, and when this entire thing happened I spent my days from about nine o'clock in the morning to three o'clock in the afternoon, either visiting Mrs. Herrick and finding out what my rights were, or else getting as far as evidence goes, as much as I possibly could.

Q. So you saw this actually take place? A. I saw it

S. M. 1398

in 15th St.

Q. Tell us what else you saw. 3518

Judge Ransom: I move to strike out the statement. This witness is obviously testifying from general hearsay. He is not even located in the building.

Mr. Moscovitz: He just testified that he saw this.

The Witness: I saw this.

Judge Ransom: Where do you work?

The Witness: 147th St.

Judge Ransom: You have pretty good eyesight, haven't you?

The Witness: I was down at 15th Street every day from the day Mr. Carlisle made that statement. 3519

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) You say you worked nights? A. Yes, I am not due in the company until four o'clock in the afternoon.

Q. And you were down in 15th St. before going to work? A. I was at 15th St. at nine o'clock every morning. I don't go to work until four o'clock in the afternoon.

3520 *William F. O'Brien—For N.L.R.B.—Direct*

Q. That is when you saw these things taking place? A. I did.

Q. Tell us what else you saw. A. Both Mr. McGraham and Mr. Anello invited all groups into this room

S. M. 1399

and they asked them to join the I.B.E.W., and they presented the cause of the I.B.E.W., stating that the management had recognized this union and it would be advantageous for the employees to recognize it and to join
3521 this union. I was not called in myself, but I spoke to Mr. Anello when he was doing this and I asked him if it was fair, and he said: "Why be stupid?"

Q. He said what? A. "Why be stupid?"

Q. Yes. What did you say to him then? A. I left him.

Q. Did you ever see any other supervisor—or did you see any supervisory employee in your own place of work engaged in this activity? A. Yes.

Q. When? A. Two or three days, probably after Mr. Carlisle made his statement in the paper, when there were meetings of the general council down at 15th St.,
3522 which I attended on my own time, and the council was deciding what to do on Mr. Carlisle's precipitate action. I came down—

Judge Ransom: I move to strike out the witness's characterization. He cannot know if it was precipitate or not.

Trial Examiner Bates: It may stand.

S. M. 1400

Judge Ransom: Exception.

A. I went back to my supervisor, Mr. Bott, and told him what information I had gotten downtown, as he was as

much in the dark as anybody else, and I warned him that we would probably take some definite action against the company's stand, that I didn't know just what we would do, but I advised him as a gentleman and because I respected him as my supervisor, to keep his nose clean. That was my expression. He told me I was being very foolish and very foolhardy.

About a day later, since there were no delegates in my supervisor's accounts bureau who were willing to do the work of the I.B.E.W., Mr. Bott found it necessary to press the lesser supervisors into organizational work— 3524

Judge Ransom: I move to strike out the witness's statement as wholly incompetent, merely conclusion, and hearsay.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Mr. Lester Mayerhoff—who is he? A. He is a clerk in charge.

Q. How many clerks does he have under him? A. Mr. Bott probably has some two hundred odd employees under him.

Q. And when you say Mayerhoff is a clerk in charge, 3525

S. M. 1401

what do you mean by that? A. Well, he was a clerk in charge of a unit with twenty or thirty people in it, but his actual unofficial title was right-hand man to Mr. Bott. He did the most of Mr. Bott's arguments. Mr. Wesley Smith, who was not in Mr. Bott's department, but who works in the same building in a different department—

Q. What is his title? A. He is a supervisor.

Q. All right. A. Mr. Smith, a gentleman named Mr. Walter Jones, who works for Mr. Bott, who is a fore-

man of the meter readers, a man named Mr. Philip Weimer, who was an assistant supervisor.

Q. What were these men doing? A. These men were asked to go around on company time and visit each employee at his desk and suggest to them that they join the I.B.E.W. union. That was the practice of the first day.

Q. Did you see it done? A. I did.

Q. Yes. A. On the second day—

Q. Did you hear them ask any of the men to join it?

3527 A. I did, too.

S. M. 1402

Q. Yes. A. And on the second day, when it was fairly obvious because of our antagonism to the company's attitude in 147th St.—

Judge Ransom: I move to strike out what the witness argumentatively states was obvious as purely conclusion, and self-serving.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

3528 A. I spoke to Mr. Lester Mayerhoff, whom I caught at one of the employees' desks with a list in his hand, in which he was asking all the employees who would not join the I.B.E.W. to write down the reason why they would not join the I.B.E.W. The management was requesting a reason why they felt they could not join the I.B.E.W. I was at home one morning about a quarter after nine when I got a telephone call from one of my fellow employees by the name of John Gray, who called me and told me that Mr. Bott, since the action of the first two days, had proved more or less negligible in advancing the cause of the I.B.E.W., that Mr. Bott had decided to call the employees into his office one at a time.

At a quarter after nine he had called two employees into the office when I was notified on the telephone. I then called up Mr. Bott and told him we were now a formally authorized union and we would present charges against Mr. Bott's action.

S. M. 1403

Q. What did he say? A. Nothing, he just hung up and didn't call any more people into his office.

Q. Who were the first two? A. James Cleary and I am vague about the other person's name. 3530

Q. All right. That's all. You are still employed by the— A. By the Consolidated Edison Company, but I work days now.

Q. When did you switch to day time? A. Last Monday.

CROSS EXAMINATION:

Q. (By Judge Ransom) Mr. McGraham and Mr. Anello are members of the I.B.E.W.? A. They are.

Q. In what department of the company do they work? A. They work in the same department I work in, Consumers' accounts bureau, commercial relations depart- 3531 ment.

Q. What work did Mr. McGraham do? A. Mr. McGraham is a bookkeeper. Mr. Anello is a meter reader.

Q. And you work where? A. I work in 147th Street.

Q. Near what street? A. Near what avenue, do you mean?

Q. Yes. A. Between Broadway and Amsterdam

S. M. 1404

Avenue.

Q. Is that a commercial accounting office there? A.

There is a commercial accounting office on two floors of the building.

Q. You spoke of Mr. Walter Jones as having been foreman or assistant foreman of the metet readers. Is he a member of the I.B.E.W.? A. I imagine he is because he did organizational work.

Q. What? A. I imagine he is.

Q. You don't know, you assume he is because he did organizational work? A. I assume that.

Q. Now, is this Mr. Mahart, is he a member of the
3533 I.B.E.W. do you know? A. A member, he told me he was a member.

Q. Phillip Wimercy, is he a member do you know? A. He is a member also on his own statement to me.

Q. Do you know whether Wesley Smith is or not? A. I don't know exactly whether Wesley Smith is or not.

Q. This John Gray who telephoned you, isn't he a member of your organization? A. He is.

Judge Ransom: That's all.

(Witness excused.)

3534 S. M. 1405

Mr. Moscovitz: I will call Mr. Lohnes.

F. W. LOHNES, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. 545 West 11th Street.

Q. New York City? A. Yes, sir.

Q. By whom are you employed? A. New York Edison.

Q. Now, that is the Consolidated Edison? A. Yes.

Q. What kind of work do you do? A. Electrical construction.

Q. What? A. Electrical construction.

Q. How long have you been working for the company? A. Since May, 1929.

Q. Are you a member of any labor organization? A. Yes, I am a member of the committee for industrial organization. 3536

Q. That's the U.E.R.W.? A. No, the C.I.O.

Q. You mean the Electrical and Radio Workers Union, is that right? A. Yes.

S. M. 1406

Q. Were you before that a member of the Employee Representation Plan? A. Yes, sir.

Q. Did you hold any office in it? A. No, sir.

Q. You did not hold any office in the local of the United Electrical and Radio Workers Union, did you? A. No, sir.

Q. Do you recall reading an announcement by Mr. 3537
Carlisle that the I.B.E.W. was recognized? A. Yes, sir.

Q. Do you recall that that was sometime in April, 1937? A. I don't know exactly the date. I know it is just recently.

Q. Yes. Were you asked by anyone any time after you learned of this announcement to become a member of the I.B.E.W.? A. Yes, I was asked.

Q. Was it while you were at work? A. Yes.

Q. By whom were you asked? A. Harry Gill.

Q. Who was Mr. Gill? A. He is a foreman at Hellgate Station.

Q. A foreman? A. And he also has all of the dis-

S. M. 1407

trict in that territory in the Bronx, upper Manhattan.

Q. Foreman of what department? A. Electrical construction.

Q. He is your boss? A. He was then.

Q. And how many men does he have jurisdiction over? A. Well, it varies, you know, according to the work. I suppose at that time he might have had a hundred and fifty men perhaps, something like that.

Q. Yes. A. I wouldn't be in a position to know ex-
3539 actly how many.

Q. That is your best approximation as of that time; is that right? A. Yes.

Q. Well, now, what took place? How did he come to ask you to become a member of the I.B.E.W.? A. Well, he called us up at the office.

Q. Who called who up? Called you alone? A. Well, there was one of the other fellows there too.

Q. What was his name? A. A fellow by the name of Jack Walsh.

Q. Yes. A. He called up at the office around the early part of the afternoon and he asked me to sign a
3540 card to join the I.B.E.W.

S. M. 1408

Q. What did you do about that? A. Well, I told him I didn't want to sign the I.B.E.W. card.

Q. What did he say? A. Well, he wanted to know why. Well, I told him I didn't want to, that was all. So, "Well," he says, "you two are the only ones that haven't signed up. Why should you be different than the rest?"

"Well," I told him, "it doesn't make any difference to me what somebody else does." I figured I could do as I pleased about that anyway.

Q. How about Walsh, what did he say? A. Well, he didn't want to sign either.

Q. Did he sign? A. No, he did not.

Q. How long were you in there? A. Oh, just a few minutes, fifteen minutes maybe, he told us over there what I told you. Then he followed us over to the elevator and said he thought we had better reconsider, though we was making a mistake by not signing. He said, "You had better think it over," he says, "and let me know before quitting time." So around—well, we were up in the locker rooms changing clothes and he 3542
sent one of his assistant foremen over to ask us if we had reconsidered. At least he did me. I don't know if he asked Walsh or not.

Q. Who was the assistant foreman? A. A fellow by

S. M. 1409

the name of Keeler, Bill Keeler. He asked us if we had reconsidered and I told him I wasn't going to sign anything and that was all there was to it. He never said anything more after that.

Q. Did you notice whether or not other men were being called in? A. Yes, there were several being called 3543
in.

Q. Do you know who they were? A. I only actually saw one.

Q. Whom did you see? A. A fellow by the name of Jack Roberts. He was up right after we left.

Q. Did he join? A. Yes, he signed the cards.

Q. How do you know? A. Well, he said he did.

Q. When he came out, he told you he had? A. Yes, so I don't know what was said, I didn't hear what Gill said to him or I didn't hear what he said to Gill, but I know I seen him talking to him and after he came downstairs he told us that he had signed, so that is all I know about it.

3544 *F. W. Lohnes—For N.L.R.B.—Cross*

Q. Thank you, that's all.

CROSS EXAMINATION:

Q. (By Judge Ransom) What kind of work do you do? A. Electrical construction.

S. M. 1410

Q. Describe more definitely what work you do. Do you do work in the field? A. Well, all of our work, you
3545 might say, is field work. It is installing equipment, running conduits, wiring, and all sorts of electrical construction that is done that the company does, around all of their sub-stations, generating stations, and what-not.

Q. Transformers? A. Yes.

Q. Consumers premises? A. No, we don't get that, that is another department. That is a different department altogether.

Q. Well, yours is street work and work around stations? A. No, we just do the inside work.

Q. In the stations? A. In the stations, sub-stations and generating stations.

Q. I think that is all.

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(Witness excused.)

Mr. Moscovitz: That is all the witnesses I am going to call, Mr. Examiner.

I have certain information to introduce into the record, however.

On June 7th, 1937, I addressed a letter to Judge Ransom asking him to produce information that I would like to put into the record and he

S. M. 1411

agreed that he would produce it, and one of the

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items was the employment record of Eleanor Misbach. She came and her record was produced and introduced.

Another was the report of the foreman of May 7, 1937. That report was produced and introduced.

Another item was a list we referred to of company union delegates which is the Employee Representation Plan. I used this appellation—and officers with their employment records showing also that information. The period that we 3548
asked for was April 1st, 1937 to June 1st, 1937. Judge Ransom has handed me this afternoon the list of the delegates and officers with their employment records showing the overtime that they worked. I have looked it over and would like now to put it into the record. The only question I have in mind is one which I will ask the Judge. Perhaps he can explain.

In April and May, 1937, there is a designation of E.R.P. work being done. Now, that is the same E.R.P. designation that existed prior to that period of time.

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Judge Ransom: Yes, you asked, Mr. Moscovitz, for the overtime in April and May of 1937.

Mr. Moscovitz: Yes sir.

Judge Ransom: Doubtless the E.R.P. work during those two months would be predominantly in April. It is the E.R.P. under the Employment Representation Plan where any is shown.

Mr. Moscovitz: Now, the only point I would like to make is whether or not E.R.P. work still

appears on records of individuals after May, 1937, if you happen to know.

3550 *Proceedings*

Judge Ransom: My impression is insofar as any instances have come to my attention, that those E.R.P. activities were all wound up either in April or very early in May.

Mr. Moscovitz: Yes.

Judge Ransom: The latter part of April and around the 1st of May, all of the councils that I know of were winding up and closing up such few matters as they had open.

Mr. Moscovitz: I offer this at this time.

3551 Trial Examiner Gates: It may be admitted.

(Document referred to received in evidence, marked Board's exhibit #19 for identification).

Mr. Moscovitz: In addition to the exhibit which I just introduced, I asked for the production of the systems, referring to the Consolidated Edison System, collective bargaining expense sheets from July 5, 1935 to date. That would be as of June 7, 1937, and I indicated that that statement is probably account #5-657, and I also asked for an account number 102, Job #8, which is also, as I understand it, an expense account.

3552 I have not yet received either one of those two items, and—

Judge Ransom: As I understand the accounting situation, the matter which Mr. Moscovitz specified and indicated by account number and

job number and expense account are not indicative of what he evidently wanted. For example, there is no account number 1002, job #8, which is an expense account, and there is nothing which is a system collective bargaining expense sheet from July, 1935 to date account No. 5-657.

I have here today, for example, a photostat of this 5-657. It is not in any sense a collective bargaining expense sheet system. I have said to Mr. Moscovitz that I inferred from those two specifications what he wanted, while his specifications would not give him what he wanted; that I have issued an instruction to have that material assembled from each of those respective companies. I am entirely willing to have the hearing held open in that respect so that he may put in that data when it is completed and produced, or I will undertake to put it in as part of my own case when it is reached, either way. 3554

Mr. Moscovitz: Well, I would prefer leaving our record open, so that it can be introduced and put in when produced.

Judge Ransom: That is entirely agreeable to me, that is, there is no such thing as Mr. Moscovitz asked for, the systems collective bargaining expense sheet. There are various accounts and records in various companies which have to be assembled and summarized.

Trial Examiner Gates: Very well. 3555

S. M. 1414

The record may be left open.

Mr. Moscovitz: May I have just one moment, Mr. Examiner?

Trial Examiner Gates: Yes.

Mr. Moscovitz: I will wait for the production of that information. I understand the record will be kept open for that purpose.

Trial Examiner Gates: Yes.

Mr. Moscovitz: I wonder, Judge, are you going to start your case this afternoon?

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Judge Ransom: No.

Mr. Moscovitz: I think perhaps we ought to discuss at this point—

Judge Ransom: I think we ought to take a recess and talk about it.

Mr. Moscovitz: May we have a five minute recess?

Trial Examiner Gates: We will recess for five minutes.

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(Whereupon a short recess was taken)

AFTER RECESS

Trial Examiner Gates: Proceed.

Judge Ransom: Mr. Examiner, as I understand the situation, the case of the Board is completed, aside from the one matter in respect to which it is kept open.

Mr. Moscovitz: Yes.

Judge Ransom: I was going to mention also that if agreeable to Your Honor that I think that

S. M. 1415

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both the respondent and I understand Mr. Moscovitz would like to leave open the making of any motions which either of us may wish to make addressed to any parts of the record, we would like to leave that open until we have had a chance to examine this rather voluminous record, if that is agreeable to Your Honor.

Trial Examiner Gates: Very well.

Judge Ransom: Now, with respect to time of proceeding, with any testimony in behalf of the respondents subject to our general reservations of rights and objections with respect to jurisdiction, Mr. Carlisle, the chairman of the Board of the

Consolidated Edison Company of New York whose statements have been referred to, I may say, I think within reason by almost every witness who has been called by the government is in Europe attending a meeting of the Executive Committee of the World Power Conference which is a quasi public or quasi governmental organization. He will return to this country, as I understand it, on the night of July 5th. 3559

Obviously this record, it does not seem to me, should or could be fairly closed without giving us at least a reasonable opportunity for Mr. Carlisle's production and testimony. 3560

Aside from that element, I should need at least a week to examine the record and prepare some analysis of the matters on which I might wish to offer rebuttal. My present impression is that the extent of those matters will not be time consuming.

S. M. 1416

Under all the circumstances I request on behalf of the respondents as needed for the fair presentation of our case a recess until July 6th, at which time the remaining data desired by Mr. Moscovitz will be produced, any desired notions on either side may be made and the respondents may proceed and will proceed with any testimony in their behalf. 3561

Trial Examiner Gates: Is there anything further? We will take another recess.

(Whereupon a short recess was taken at this point.)

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Proceedings

AFTER RECESS

Trial Examiner Gates: Proceed.

Judge Ransom: If I may add briefly to the statement which I had made before recess, I do not think that anyone of us, certainly no one on respondent's side, was aware until yesterday afternoon that this proceeding was likely to terminate today or this week. A considerable number of witnesses who had been brought to this

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room were excused and have not been called and therefore the case is now terminating so far as the government's side is concerned. There are thirteen hundred and one pages in this record of the stenographic transcript, exclusive of today. I submit that in many ways the cooperation of the respondents and their counsel have expedited this hearing. Many matters which might easily have been utilized, had there been any such dis-

position to protract these hearings through many

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pages and days of testimony have been obviated by the presentation and submission of data in compact form.

With respect to an adjourned date, I find myself in this position: Mr. Carlisle, as I have said, whose actions and statements have been referred to by practically every witness during these hearings, is in Europe, not on a vacation but on a matter of public or quasi public business. Mr. Dean, vice president of the New York and Queens Electric Light and Power Company is in Milwaukee attending this week the convention of his profession, the American Institute of Electrical Engineers.

Mr. Dean's company is that which is claimed to have discharged five of the six employees, to which this action or this proceeding, as I see it, primarily, relates. Under those circumstances it is entirely impracticable and physically impossible to proceed this week or early next week. I submit that with a record of such size, and under such circumstances involving issues which are to some extent new and pioneering issues that we are entitled fairly to a decent time to examine this voluminous record and see what testimony the 3566
respondents may desire to present in rebuttal and we are entitled to have those two principal witnesses available for testimony. I, accordingly, in behalf of the respondents, ask an adjournment until, or a recess, until July 6th.

S. M. 1418

I point out further that this is not a situation of a single employer, this is a case involving seven employers' companies at different localities, two of them not within the City of New York are companies operated by local executives. A great 3567
number of alleged supervisory employees have been referred to, men whose capacities with those companies are so humble that at least I, with some years of familiarity with these company affairs, have not in any instance, I think, ever heard of the men claimed ever to be important supervisors and I think that we are entitled to an opportunity to examine the record and consult with the respective companies regarding these allegations.

Further, under such advice and instructions as you have today received by telephonic confer-

ence with the National Labor Relations are not able to grant the request which I make I ask that the hearing be, in any event, adjourned to July 6th, and that I may be given an opportunity on behalf of the respondent without prejudice to our contentions as to any jurisdiction in this Board at all, that I be given an opportunity to present the matter to the Board so that the Board may determine whether these witnesses shall or shall not be heard at that time.

3569 Mr. Moscovitz: I have nothing to say.

Judge Ransom: May I say this, further: Here is a case which I believe is a pioneering case, it

S. M. 1419

involves a new question, or several new questions, not merely the question of National Labor Board jurisdiction over local public utilities, even though some of them are large and important, but also a question of boundaries of state and federal jurisdiction. Here is a sovereign state whose franchise holding creatures are brought before

3570 the Board; the state has regulated those respondents for many years in many respects. Lately the State of New York has set up a system of regulation and public supervision of the labor practices of its corporate creatures; including the respondents. The question is certainly new as to whether with respect to employers of the character of these respondents, they are under the jurisdiction of the National Labor Board at all or under the exclusive jurisdiction of the State Labor Board, or whether in some manner the exercise of Federal regulatory power over labor practices has absorbed and sucked dry the powers of the State of New York

as to such matters. The question is important, not merely in the state of New York and to these respondents, but I believe there is some 16 or 17 other states in which a like question is presented. So far as I know this is the first major case of that character and I am quite sure it is the first case of that character which presents that question as to local public utilities. Under those circumstances, I say sincerely in behalf of these respondents that we would be sorry to see the

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S. M. 1420

question of what seems to us, frankly, an arbitrary denial of fair and full hearing interjected into a case which presents an important question of law and policy.

We submit that in behalf of the respondents, that, maintaining fully our questions and contentions as to jurisdiction, we have co-operated to the utmost in expediting the presentation of this case, and in helping to bring out such facts as may be helpful to the Examiner and to the Board in the determination of the case, and we respectfully ask that opportunity through such few witnesses as we may wish to call. 3573

If Your Honor is at the moment, under your instructions, powerless to present that request, I ask opportunity between now and the 6th of July t opresent the matter to the Board.

Trial Examiner Gates: Will you state for the record at this point the title of Mr. Dean?

Judge Ransom: Mr. Dean is vice president of the New York and Queens Electric Light and Power Company, and I state also for the record that Mr. Dean is, in the opinion of counsel for the respondents, an indispensable witness to the

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issue presented by the complaint and the charge with respect to the discharge of five employees of the New York and Queens Electric Light and Power Company who are, I believe, five of the six to which this complaint relates.

Trial Examiner Gates: Do you care to give

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any idea as to how much time will be required on direct examination of any witness that you might call.

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Judge Ransom: As far as I am able to tell, I wouldn't want to be bound by this on any time clock basis, I would say that from any impressions that I have, that the direct examination of all witnesses in behalf of the respondents would not occupy more than a day. My personal impression is that it will occupy less.

Now, that does not seem to me an unreasonable request, that we be given the opportunity. I should think the Board would want a continuance of such help as the respondents can give in bringing out the full facts.

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I submit also that in fairness, it should be recognized that at least up to this moment, the respondents and their counsel have been helpful in eliciting facts which the Board should have before it.

Trial Examiner Gates: The hearing may be adjourned until the 6th of July for the purpose of taking the testimony of Mr. Carlisle. I will reserve decision as to taking any further testimony.

In the meantime, respondents, if they see fit, may petition the Board for permission to introduce testimony other than that of Mr. Carlisle in compliance with the statement you just made.

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Perhaps it may also be well to state that

S. M. 1422

should it be impossible for me to resume the hearing on the 6th of July, I shall ask that the hearing may be postponed and set for another date, on two days notice.

Judge Ransom: We shall be entirely willing to conform to your situation in that respect as long as it would not take place a date earlier than the 6th.

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Trial Examiner Gates: If there is nothing further—

Mr. Moscovitz: I understand that this adjournment period does not bar me from making whatever motions may be necessary at the next return date, that is, the next adjourned date.

Judge Ransom: I understand that in any event, on that date, that Mr. Moscovitz and I each have a right to make any motions that we see fit and that this additional data which Mr. Moscovitz has specified on the record will be supplied, and that he may offer it if he wishes and that the testimony of Mr. Carlisle may be offered on that date under your Honor's ruling, and that the question of whether I am to be permitted to offer any other witnesses on that date and have such testimony received is reserved for determination at that time, and I state that it is my present intention, meanwhile, to present the matter to the consideration of the Board, so that if they wish to give any further instructions to you, as Trial Examiner, that may take place.

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Trial Examiner Gates: The hearing is adjourned until 10:00 A. M., July 6th.

3580 S. M. 1423

Minutes of Hearing, Held July 6, 1937

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

IN THE MATTER of CONSOLIDATED EDISON COMPANY OF NEW 3581 YORK, INC., and its affiliated Companies, BROOKLYN EDISON COMPANY, INC., NEW YORK & QUEENS ELECTRIC LIGHT & POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH & ELECTRICAL SUBWAY COMPANY, *Respondents,* and UNITED ELECTRICAL AND RADIO WORKERS 3582 OF AMERICA, Affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.	Case No. II-C-224

14 Vesey Street,
New York City, N. Y.,
July 6, 1937.

The above-entitled matter came on for hearing pursuant to adjournment taken June 24th, 1937, at 10:00 o'clock A.M.

Before:

ROBERT M. GATES, Trial Examiner.

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National Labor Relations Board.

WILL MASLOW, Esq., Attorney for the National Labor

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Relations Board.

LOUIS B. BOUDIN and SYDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers Local 1212. 3584

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City (By William L. Ransom, Jacob H. Goetz and Pincus M. Berkson, of counsel), appearing specially for the respondent companies, reserving all objections to jurisdiction.

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PROCEEDINGS

Trial Examiner Gates: Whenever you are ready, Mr. Moscoyitz. 3585

Mr. Moscovitz: Judge Ransom, Mr. Examiner, has produced for me today a summary of charges and accounts covering general welfare, collective bargaining and employee representation plan, and it includes expenses for account of general councils of companies merged into certain companies that are named here during that period, and the period is 1934 to 1937.

This was produced at my request. I would like to make it part of the record but before doing so I would like to have the opportunity of reading it perhaps at noon and offering it this afternoon.

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Judge Ransom: That is agreeable.

I may say this, as I stated to Mr. Moscovitz, it does not include the Westchester Lighting Company or the Yonkers Light and Power Company. A considerable amount of time would be required in digging out those items from their time sheets and records, and the amount would be relatively slow, so hardly worth the delay, I take it.

Mr. Moscovitz: I have but one general motion to make this morning, Mr. Examiner, no others.

3587 I move to have the pleadings in this case conform to the facts.

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Judge Ransom: What does that motion mean. I think it should be made definite and certain.

Trial Examiner Gates: Do you contemplate any important change by that, Mr. Moscovitz?

Mr. Moscovitz: No, I do not. Just a question of having the dates and other matters which appear in the complaint made certian by the testimony of witnesses who have appeared in the proceedings.

3588 Judge Ransom: I object to that decidedly. We are here upon the complaint and charge.

Granted that the proof does not sustain the complaint and the charge, I do not believe that this Board would have power to amend at this stage, and it will certainly appear that there has been no notice of hearing upon anything except the complaint in its present form.

Trial Examiner Gates: Motion is granted.

Judge Ransom: Exception.

If that completes the case for the government, subject to a later marking of this further exhibit, I have several motions which I would like to make for the record.

I move to strike out the testimony of Philemon Ewing,

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on the ground that neither the complaint nor the charge specifies, or makes any complaint or charge concerning the termination of employment of Philemon Ewing, as one of the matters to which this proceeding relates; and on the further ground that the respondents Consolidated

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Edison Company of New York, Inc., which terminated the employment of Philemon Ewing on January 18, 1936, has not been served with any notice of hearing, or any copy of any complaint or charge relating to the termination of employment of Philemon Ewing.

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Trial Examiner Gates: As I understand it, Mr. Moscovitz, the Board did not intend that the complaint cover the discharge of Ewing, is that correct?

Mr. Moscovitz: The complaint as originally issued does not cover the case of Ewing.

Trial Examiner Gates: Do you intend by the motion just granted to have it covered?

Mr. Moscovitz: Yes.

Trial Examiner Gates: In that event I will change my ruling.

Mr. Moscovitz: Well, then, does the change in ruling go only to the Ewing addition?

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Trial Examiner Gates: Yes.

Judge Ransom: As I understand it, Your Honor has not allowed any amendment or conformance of the complaint to bring the terminations of employment of Philemon Ewing within the scope of the matters alleged as a basis for the complaint as charged?

Trial Examiner Gates: That is correct.

Judge Ransom: I move to strike out.

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Trial Examiner Gates: That motion to strike out his testimony is denied.

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Judge Ransom: Exception. I move to strike out the testimony of Charles A. Smith on the ground that Mr. Smith's testimony relates exclusively to alleged activities on his part prior to July 5, 1935, the date of the taking effect of the National Labor Relations Act.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception. I move to strike out the testimony of Foster Strader, Stephen Solosy and Philemon Ewing, in so far as this testimony relates to the matters stated by such witnesses to have taken place

3593 prior to July 5, 1935.

Trial Examiner Gates: Motion is denied.

Judge Ransom: Exception. I move to strike from the testimony of all witnesses on behalf of the government such parts thereof as relate to the activities of the E.R.P., prior to April 12, 1937, on the ground that such testimony is not relevant or pertinent to any issue raised by the complaint or the charge upon which the complaint is based and upon the ground that the complaint or charge does not set forth or give any notice of any issue concerning the activities of or in behalf of the E.R.P.

3594 Trial Examiner Gates: The motion is denied.

Judge Ransom: Exception.

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I renew the motions heretofore made to dismiss the complaint or charge on the ground that the amendment to the complaint herein and the testimony presented in support thereof have made the I.B.E.W. and each of the local unions of the I.B.E.W. specified in such testimony necessary and indispensable parties respondents in this proceeding and also on the further grounds stated in behalf of such motion when made.

Trial Examiner Gates: Will you state, Judge Ran-

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som, when those several locals were chartered? Of the I.B.E.W.?

Judge Ransom: I don't think that is within my knowledge, I have never ben acquainted with those dates.

Trial Examiner Gates: Motion is denied.

Judge Ransom: Exception.

I move to dismiss charge 1 and the corresponding parts of the complaint for failure to prove facts sufficient to constitute a case or a cause for grievance under the National Labor Relations Act and particularly because it now affirmatively appears that the work of 3596
the employees whose services were terminated or such terminations of their service did not affect interstate commerce and weren't related to activities that affected interstate commerce.

Trial Examiner Gates: Motion is denied.

Judge Ransom: I move to dismiss the charges two and three and the corresponding parts of the complaint

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for failure to prove cause of action or grievance under the National Labor Relations Act and upon the further ground that the acts complained of not only entirely 3597
ceased according to the record but any apprehension of their recurrence has been completely removed by the action of each of the respondents evidenced by the agreements as of June 15th, 1937, entered into by the respondents and the I.B.E.W. and the local unions thereof, the local unions it having been testified in this case, constitute employees of the respondents.

Trial Examiner Gates: Two and three?

Judge Ransom: That is with respect to what I would suppose would be a claim of coercion and financial support, use of company premises and company time in aid of labor organization.

3598 *Proceedings*

Trial Examiner Gates: Motion is denied.

Judge Ransom: Exception.

I move to dismiss the complaint in the proceeding upon each and all of the grounds stated in the notice of motion served in behalf of the respondents on May 17, 1937 and upon each and all the grounds stated in support of such motion upon the record of this proceeding and upon the further and particular grounds that the facts which have been stipulated by and between the parties in this record and embodied in Exhibit #2 affirmatively and

3599 wholly disprove the allegations of paragraphs 11 and 12

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of the complaint and on the further ground that there has been a complete failure on the part of the government to prove the allegations of paragraph 13 of the complaint, and upon the further ground that it now affirmatively appears that there is no basis for jurisdiction of the National Labor Relations Board over the respondents or their labor practices, and that the matters and things alleged in the complaint now affirmatively prove to in no way affect interstate commerce.

3600 Trial Examiner Gates: What paragraph is that?

Judge Ransom: Paragraphs 12 and 13—well, they allege various acts.

(Discussion off the record.)

Trial Examiner Gates: Motion is denied.

Judge Ransom: Exception.

I move to dismiss the complaint upon the grounds that events taking place after the commencement of these proceedings, namely, the contracts shown by the record to have been entered into as of June 15, 1937, by and between the respondents and the I.B.E.W. and the respective local unions thereof have rendered moot any

controversy raised by the allegations set forth in paragraph 17 to 22 of the complaint and paragraphs 2 and 3 of the numbered charge, so that there is not and could not be the basis for granting an relief founded on such

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allegations of the charge or upon proof adduced in support thereof and upon the further grounds that the National Labor Relations Board is without power or jurisdiction to hear or determine any such allegations or 3602
proof or to grant any relief upon the basis thereof, when and where it affirmatively appears that labor agreements such as those entered into, as of June 15th, have been executed and are in force between respondents complained of and the labor organizations mentioned.

Trial Examiner Gates: The motion is denied.

Judge Ransom: And I ask leave to amend the answer which was filed and served on behalf of the respondents so as to set up by way of a further separate defense the matters and things referred to in the last summation.

Trial Examiner Gates: Any objection?

Mr. Moscovitz: No objection. 3603

Trial Examiner Gates: It may be so amended.

Judge Ransom: Now, I will call to the stand, Mr. Carlisle.

May the record show that I except to each of the rulings?

Mr. Moscovitz: Mr. Examiner, I thought before Mr. Carlisle was sworn, I would offer this exhibit, the summary of charges and accounts covering general welfare, if I may first have a word with Judge Ransom about the Westchester Company and the Yonkers Company.

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Judge Ransom: The rule or provision of the Em-

ployees Representation Plan, which is quoted in a note in this proposed exhibit, as applicable to the companies for which this exhibit brings together the figures, my understanding is that a like rule applied in Westchester County as to the Westchester Lighting and the Yonkers Lighting and Power Company. The rule and the practice are the same. What is lacking here, owing to the length of time that would be required to assemble amounts is detailed figures for those two companies.

Mr. Moscovitz: With that explanation, Mr. Exam-
3605 iner, I offer this exhibit.

Trial Examiner Gates: There being no objection it is admitted.

(Document referred to marked Board's exhibit No. 20 received in evidence, Witness Carlisle.)

FLOYD L. CARLISLE, called as a witness for the respondents, being first duly sworn, testified as follows:

Direct Examination:

3606 Q. (By Judge Ransom) What is your position with the Consolidated Edison Company of New York? A. I am chairman of the Board of Trustees.

Q. And how long have you been such? A. Three years.

Q. Are you a member of the Board of directors of each of other companies which are respondents in this case? A. I am.

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Q. In behalf of the management of each of the respondent companies, have you personally been their spokesman and negotiator in major matters affecting the labor policy and collective bargaining? A. I have.

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Q. In the month of April, 1937, after consultation with the management of the respondent companies, did you conduct collective bargaining negotiations with the I.B.E.W.? A. I did.

Q. With whom did you negotiate? A. With Mr. John Tracy, the President of the International organization.

Q. Were the negotiations upon his initiative or yours? A. They were upon his.

Q. What did he ask you to do? A. He asked to recognize his organization for collective bargaining.

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Q. Did he ask you to do anything beyond that by way of a labor agreement? A. Yes, he asked that a complete labor agreement be entered into which would be the subject of discussion and completion.

Q. Did he demand of you that the companies grant to the I.B.E.W. a closed shop? A. He discussed it. He did not demand it.

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Q. Did you grant it? A. We did not.

Q. Did Mr. Tracy demand of you the so-called check-off system of collecting union dues? A. He did not.

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Q. Did he at any time formally, that is, by letter, make the demand upon you for recognition of the I.B.E.W. as a collective bargaining agency with the management of the respondent companies? A. He did.

Q. And do you recall whether that was a letter of April 16th or thereabouts? A. It was in the form of a letter from Mr. Tracy, the exact date of which I do not remember, but it was approximately that time.

Q. I show you a copy of Board's exhibit #13-A, in this case, which appears to be a letter from Mr. Tracy to you dated April 16th and ask you if you recognize that as a copy of the letter which you received from Mr.

3610 *Floyd L. Carlisle—For Respondents—Direct*

Tracy or with respect to a recognition of the I.B.E.W. for collective bargaining? A. I recall that that is a copy of the letter.

Q. And the government has placed in evidence as Board's exhibit #13-B, a copy of a letter dated April 20th, 1937, to Mr. D. W. Tracy. I ask whether that is a copy of the letter which you sent to Mr. Tracy in reply to his letter of April 16th? A. This is the answer

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3611 to that letter.

Q. That was sent by you? A. Yes.

Q. When did you decide to grant recognition to the I.B.E.W. as a collective bargaining agency? A. Within a day or two prior to the sending of that letter.

Q. And would you say that your final decision was represented by your letter to Mr. Tracy which granted this recognition? A. It was.

Mr. Moscovitz: When you say a day or two before the letter was sent, do you mean a day or two before Mr. Tracy sent his letter to you?

The Witness: No, the answer of April 20th.

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Q. (By Judge Ransom) Now, before granting recognition to the I.B.E.W. did you communicate your decision to any representatives of the employees? A. I did.

Q. To whom? A. I called together the chairmen of the various councils within the systems who administered the employees representation plan.

Q. Can you fix that as of the day when your letter went to Mr. Tracy? A. My recollection is that the meeting with the chairmen of the councils was on the

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20th of April, the date that this letter was sent.

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Q. And do you recall whether it was morning or afternoon, the meeting with the chairmen of the general councils? A. The meeting was, I believe, at ten o'clock in the morning.

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Q. At the time that you talked to the chairman of the councils, did you tell them that the management of the companies had decided to recognize the I.B.E.W. for collective bargaining? A. I did.

Q. Had you then sent to Mr. Tracy the letter? A. I had not. 3614

Q. Testimony has been given here in which it was asserted or claimed that the time that you talked to the chairman of the general councils on the morning of Tuesday, April 20th, you told them that you were going to recognize the I.B.E.W., had you already sent your letter to Mr. Tracy and had sent it to the newspaper publications, is that a fact? A. That is not a fact.

Q. You sent your recognition letter to Mr. Tracy that day? A. I did.

Q. After telling the general council chairman you were going to? A. That's correct. 3615

Q. And was any release of the letter—was there any release of the letter for newspaper publication; was that before or after you had had this meeting with the council chairman? A. It was after a meeting of the council chairman.

Q. Now, on a later day that week, did you have any

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conference or attend any meeting at the request of the chairman and members of the general council? A. I did.

Q. Can you state how long that was after the first

3616 meeting with the general council chairman? A. Well, my recollection is that it was the following day, but I am not absolutely certain whether it was that day or the next day.

Q. In any event, it was within a day or two after the meeting with the general council chairman on the 20th? A. It was.

Q. Was your meeting with the general council chairman on the 20th, was that solely for the purpose of telling them that you were going to recognize the I.B.E.W.?

3617 A. Not solely, no.

Q. What, if any other purpose, did you have in going before the council chairman in behalf of management, was there any other announcement or information which you and your associates in the management had to communicate to them that day? A. There was.

Q. What was it? A. The United States Supreme Court decision in the Wagner Labor Act, in spirit, clearly would prevent a continuation of the company's support of the employees representation plan and a bill that was pending in the New York State Legislature

3618 S. M. 1440

which seemed certain of passage, it having the support of the Governor and members of the legislature, had similar provisions and I felt that it was only fair to the chairman of the employee representation plans that they should be told that the company would not go on with a continuation of that collective bargaining arrangement.

Q. That is, from the time that the employees representation plan was set up and the employees began choosing their representatives for collective bargaining under that, had the companies upon the certification of the various general councils been paying the expenses of elections and, I mean, such expenses as printing and

transporting of the ballot boxes and voting booths and the like, and also allowing time off where it was necessary for employees to vote in elections or attend council meetings? A. The company had done that.

Q. And as those expenses were certified to the management of each of the respondent companies, vouchers of that character had been paid ever since the E.R.P. system had been set up for employees' elections? A. That is correct.

Q. At this meeting of the 20th, with the general council chairman, what did you tell them as to whether you 3620
could or would in view of the approaching State law and

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the spirit of the Federal law, what did you tell them as to whether you would go on continuing those payments? A. I told them that we would not do it.

Q. What did you tell them at that time, if anything, as to whether you felt warranted in continuing collective bargaining negotiations with councils whose expenses had been paid upon their certification for several years? A. Well, I had a copy of the State Act with me, I read from it, I stated to the council that I did not believe, I 3621
had been so advised from the decision that we had over the holding company still that we were under, the National Act, that it was perfectly obvious that the State Act was about to be passed and we would be under that Act and that that Act prohibited the payment by an employer for any purpose to a labor organization with whom collective bargaining was transacted and we just could not proceed, would not proceed further.

There was some incidental expenses that had been incurred by the councils which we said we would pay but we were no longer willing to use that method of collective bargaining.

3622 *Floyd L. Carlisle—For Respondents—Direct*

Q. That is, as far as the councils were concerned, then, as I understand your testimony, you told them that you could not continue as a permanent matter col-

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lective bargaining with them? A. I told them that that would not be continued.

Q. And did you say anything to them, or not, as to winding up what affairs they had pending? Did that come up, or not? A. Well, I don't recollect that that was

3623 discussed, other than in the most casual and minor way.

Q. Did any of the council members ask you, if you recall it, any questions about an independent union? A. They did.

Q. What did you tell them, as you recall it? A. I read the provisions of the Doyle Bill, which I expected to be enacted into law, and I said, "Now, it is not the law, it is the spirit of the law, and we are going to proceed under that. We have no right to make any suggestions or recommendations as to the nature and the character of an organization that might be set up by the employees.

3624 Q. Well, did you make any definite statement to them as to whether or not the company could in any way pay or reimburse any expenses of an independent union, if the employees decided to have one? A. I said that my reading of the law was they could not.

Q. Did you say that the companies would not give any financial aid? A. I did.

Q. Did you undertake to tell them or advise them whether they should or should not form or join an independent union? A. I did not.

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Q. Did you tell the councils that their members ought to form local unions of the I.B.E.W.? A. I did not.

Q. Did you tell the council members or any other employees that they ought to join the I.B.E.W, or that they ought not to join any labor organization? A. I did not. On the contrary, I tried to express myself in the most clear and emphatic manner that I could, that every employee, so far as the management was concerned, must make his decision entirely upon his own.

Q. Do you recall making this statement to the members of the general councils at the second meeting with the members, as well as the chairman present, do you recall saying this: "Let me say it very plain, no member 3626
working for this company has got to do anything except what they want to do individually, on their own. I will be very clear about that. It was your selection. You are to do as you please. We are not taking the position that you must do this or you cannot do this. You have to make the choice." A. I said that, certainly, in substance.

Q. In recognizing the I.B.E.W. for collective bargaining, did you close the door to individual employees or groups of employees so far as discussions of any grievances with the management is concerned? A. We did not.

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Q. As a matter of fact, in the past, has the management conferred with various employees and groups of employees from time to time on matters as to which such employees or groups of employees felt that grievances existed? A. It has.

Q. Several of those instances have been testified to here. Does the recognition of the I.B.E.W. as collective bargaining agency change in any way your policy or your practice so far as such discussion of grievances with individual employees who wish to present them individually, or with groups of employees who wish to bring such grievances to you? A. It does not change it.

3628 *Floyd L. Carlisle—For Respondents—Direct*

Q. There has been testimony here, Mr. Carlisle, that the general councils of the employees elected under the E.R.P. had maintained offices for collective bargaining purposes on company's premises, and that those council officers and members were not immediately put out of those offices on the 20th or 22nd of April, but continued to occupy them for several days after that. Was there any reason why you did not put them out immediately or stop their occupancy of company premises? A. Why, we expected that in ordinary decency they would have a
3629 chance to clean up the various matters that were pending or that were related to the dissolution of those organizations.

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Q. Were these the general councils that had been elected by the employees themselves? A. It was a continuation of the councils that were set up at the time of the NRA.

Q. Why didn't you shut I.B.E.W. representatives out of company premises? A. Why, I never understood that we were conducting a policing of the company's
3630 premises, the contract with the I.B.E.W. provides that solicitation shall not be had upon the company premises or upon the company time for membership, and that was the expression of the arrangement that was to be made.

Q. Did that seem to you the practical way of dealing with that matter so far as members of the I.B.E.W. was concerned? A. That seemed to be the only practical way.

Q. I take it that you are referring to the provisions of Article 2, Section 2, of the Labor agreement as of June 15th, which provides that the Brotherhood agrees for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also

agrees not to solicit membership on Consolidated Company time or property. A. That's right.

Q. As a matter of fact, has the management ever undertaken or has it ever felt confident that it could, if it wished, control what the employees think about or talk

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about on company time? A. Well, there are 40,000 employees plus; I assume that we still have free speech in America. It is inconceivable that any employer could force what the employees might discuss with each other, 3632
certainly we never attempted to do it. They could discuss anything they please with each other. Normally, I assume they do, but the provisions of the contract contemplate, the principle is that company time and company property are devoted to company uses primarily. What individual employees might discuss with each other is none of our business.

Q. Did your companies make collective bargaining agreements as to wages, hours and conditions of employment, each of the respondents with a local union comprising employees of that respondent? A. It did.

Q. The exhibit which is in evidence here, No. 14, is 3633
a photostatic copy; do you identify that as a copy of the agreement with its various riders?

(Exhibit 14 passed to the witness.)

A. I do.

Q. Did you and others of the management personally negotiate these several contracts with the I.B.E.W.? A. We did.

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Q. Who represented and acted for the employees in negotiating and signing these agreements? A. Either the officers or committees of the locals did.

3634 *Floyd L. Carlisle—For Respondents—Direct*

Q. In various of the respondents, do you know whether committees were elected by the employees constituting those locals for the purpose of negotiating and signing those agreements? A. That is what they stated to date.

Q. In any event, as to the New York Edison, or the Consolidated Edison Company, there was a committee of employees from the local union? A. That is correct.

Q. And did you conduct the negotiations personally with those committees? A. I did.

3635 Q. Did Mr. Tracy participate in the negotiations? A. He did not.

Q. Did you—do you know or does the management of any company know how many of its employees belong to the I.B.E.W.? A. I do not. I do not know myself.

Q. And the I.B.E.W. furnished the company information as to the membership of its local unions among your employees? A. It has.

Q. I show you this sheet and ask if that is a copy of the data which has been furnished to the management by the I.B.E.W.? A. That's right.

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Judge Ransom: I offer it in evidence.

Trial Examiner Gates: There being no objection, it will be received.

(Document referred to received in evidence and marked Respondent's Exhibit 16, Witness Carlisle.)

Judge Ransom: My associate calls to my attention that the memorandum of agreement between Consolidated Edison Company and the I.B.E.W., Board's Exhibit 14, was only marked for identification and has not been marked in evidence. I now offer it in evidence.

Mr. Moscovitz: No objection.

(Document referred to previously as Board's Exhibit 14 for identification is now received in evidence and marked Board's Exhibit No. 14, Witness Carlisle.)

Q. (By Mr. Ransom) Mr. Carlisle, there has been testimony here with respect to the termination of employment of some six employees; did you have anything to do with laying off or discharge of any of these men to which that part of the proceeding relates? A. I had 3638 nothing to do with it.

Q. Aside from your general knowledge of the possibilities with respect to reduction in forces where the economical and efficient operation would be served by a reduction in force, you had nothing to do with individual

cases? A. That is correct.

Mr. Ransom: That is all.

CROSS-EXAMINATION:

Q. (By Mr. Moscovitz) Mr. Carlisle, you testified that 3639 for the last three years you have been the chairman of the Board of Trustees of Consolidated Edison Company? A. Well, there was the Consolidated Gas Company that was the parent company. I was chairman of the Board of the New York Edison Company for, I think, four years, and the parent company Board for three. That may be inexact as to exact time.

Q. And during the last three years, have you also been the spokesman for the system on labor questions? A. On major labor questions.

Q. And the major labor questions would be consideration of proposed collective agreements? A. That's right.

3640 *Floyd L. Carlisle—For Respondents—Cross*

Q. Yes. As well as the operation of your employee representation plan? A. I sat in at various times with the chairman of the general councils when wage changes were made or important changes were made such as restoring overtime and so on.

Q. The employee representation plan came into existence in 1934, or at the time of the NRA approximately, isn't that right? A. That's right.

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3641 Q. Before that time, there were no employee representation plans within the system? A. That is correct.

Q. And am I accurate in using the word "system," as applying to the respondents in this case? A. I think that is correct.

Q. How long have you been associated with the system? A. Since 1930.

Q. And before that, you were not employed by any one of the company respondents in this case? A. That's right.

Q. Now, when you came with the system in 1930, there was no form of labor representation in the sys-
3642 tem; is that right? A. There was no formal organization of employees.

Q. Yes. And questions of grievance would be taken up in accordance with the method outlined by the particular foreman or superintendent of the particular plant where the grievances would arise; isn't that right? A. Yes.

Q. More or less catch as catch can on those questions at that time? A. Well, I wouldn't say that it was catch as catch can. There were discussions, various depart-

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ments had discussions, various plans of wages schedules

were discussed. It was not the cold-blooded "take it or leave it" proposition, by any means.

Q. Yes. Was it called to your attention at any time after you went with the system that an independent labor organization known as the Independent Brotherhood of Utility Employees was in the field? A. I don't remember the date. I think it came about the time of the NRA.

Q. Yes. And was it brought to your attention that that organization was organizing in your system? A. I knew that Mr. Kountz, for instance, who was active in 3644
NRA hearings, was seeking to build up an organization.

Q. And was it also brought to your attention that that organization became a national one? A. No.

Q. You didn't know that? A. No.

Q. All right. Was it brought to your attention that any other labor organization was starting to organize in your system at that time? A. No.

Q. Now, did the employee representation plan come into existence after the Independent Brotherhood of Utility Employees started organization? A. I don't

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recall. So far as the company was concerned, it wasn't certainly related to it at all.

Q. Just what do you mean by that, Mr. Carlisle? A. Why, when the NRA was created, I happened to be the chairman of the committee of the power industry that worked on the Code. Judge Ransom was the counsel, and the company representation plan grew out of the NRA procedure and growth. It had no relation to his quite obscure and small group that were seeking, through Kountz, to do something.

Q. In other words, the company plan grew out of the NRA efforts? A. That's right.

3646 Q. But the Independent organization had no growth through those efforts. It was something separate and apart from that? A. Well, we knew very little of it, and I know practically nothing of what it did.

Q. Now, after the employee representation plan came into existence, it continued throughout the system until it was dissolved in April of 1937? A. I think that is correct.

Q. Yes. Was it brought to your attention at any time during the period of the life of the plan that any
3647 other labor organization was coming into the system for

S. M. 1453

purposes of organization? A. Oh, yes, one of the government people in the NRA days, Mr. Brunizette, of the International Electrical Workers, he many times discussed our entering into a contract, asked us to do it.

Q. When was that, specifically, do you recall? A. I should say in '34 or '35.

S. M. 1454

Q. Yes. On behalf of what employees? A. On behalf
3648 of his organizaion.

Q. Yes, but on behalf of what employees within that organization? A. Why, I don't know what employees were members of his organization. We had relations with the No. 3 local of the International Brotherhood of Electrical Workers when we took over the New York Central Electric operations, their people were all members of the I.B.E.W.

Q. What year was that? A. That was in '36, I think.

Q. And your discussions with this gentleman from the N.R.A. never got to the point where you considered proposals for collective agreement? A. No.

Q. They were discussions? A. That's right.

 3649

Q. Now, what brought to your attention that any other labor organization during that period was coming into the system for organization purposes? A. Why this organization that Kuntz was the head of. I don't recall whether there was any correspondence with them or not, but they appeared before most of the hearings, before the Public Service Commission and took a position that they were entitled to appear. They never went beyond that particularly.

S. M. 1455 3650

Q. When was it first brought to your attention that the I.B.E.W. was organized—was organizing your employees? A. Why the I.B.E.W. contact was at the time of the opening of the discussions with Mr. Tracy.

Q. Was that then in April, 1937? A. Correct.

Q. Now do you recall that being the time when it was first brought to your attention that the I.B.E.W. was organizing—what the exact date was? A. Why it was somewhere during the week preceding the 19th I should say.

Q. Now, before the week preceding April 19th, was it brought to your attention that any other labor organization was organizing within your system? A. Why, I believe that they were circulating pamphlets that were distributed at the doors and they had more or less—they had more or less newspaper releases. The year before my recollection is that they gave newspaper releases that they were going to shut down the Hudson Avenue station on a given date and we knew that such an organization was in existence, yes. 3651

Q. Well, you have not yet named what organization. A. Well, they changed their name two or three times, Mr. Count's organization was just beginning.

Q. Yes. You are referring alone to the Independent

S. M. 1456

Brotherhood of Utility Employees? A. I don't recall the successors names, if they changed their names. Mr. Wersing appeared before the Public Service Commission in consolidation proceedings. I assume that that organization was the organization that you refer to.

Q. Well, before April 19, 1937, aside from the Independent Brotherhood of Utility Employees, was it brought to your attention that another labor organization was in the field; was it brought to your attention
3653 that the United Electrical and Radio Workers affiliated with the C.I.O. was organizing in your system? A. Well, I read in the newspapers that Mr. Cary was seeking to build up membership in that organization.

Q. When was that brought to your attention? A. Why I should say sometime in the spring of 1937.

Q. It was at a time preceding April 19th, is that right? A. That's right, yes.

Q. And was it in the month of March, 1937? A. Well, I don't recall, it was some time in the later winter or spring.

Q. Now, was that the first information that you re-
3654 ceived regarding that organization? A. Why, I don't recall any communication, there may have been communications that I don't recall.

S. M. 1457

Q. Were any communications from this organization brought to your attention? A. Well, if they were addressed to me I certainly got them. If they were addressed to others, I probably saw them.

Q. Do you have a recollection of having seen such communications? A. I don't know. Frankly I don't recall the letter from Mr. Cary or anybody in that organization, but there might have been one.

Q. And when you first heard of the intention of Mr. Cary to organize within your system the employee representation plan was still in existence? A. It was.

Q. But you had not contemplated at that time a dissolution or up to that time a dissolution of that plan, is that right? A. The contemplated dissolution of that plan came after the Supreme Court decision in the Wagner Labor Act.

Q. And that was then in April 1937? A. That is correct.

Q. Now your first communication with Mr. Tracy 3656
was on April 19th, do you recall when it was that the contract with Mr. Tracy was executed?

Judge Ransom: What do you mean now, are you referring to these collective bargaining—

Mr. Moscovitz: The collective bargaining agreements.

S. M. 1458

The Witness: There was nothing in writing until my letter of the 20th.

Q. (By Mr. Moscovitz) Yes, and that then was a let- 3657
ter of recognition, is that right? A. That's right.

Q. Yes, so for the first time, April 19th was the first time that you had heard from the I.B.E.W. officials? A. Oh, no, I had had talks with Mr. Tracy prior to that time.

Q. All right, now, when had you spoken with Mr. Tracy prior to April 19th? A. I met Mr. Tracy twice prior to the 19th of April, I should say it was within ten days prior to that time.

Q. You would say then the first week of April? A. Approximately that, I don't think it was prior to the first of April.

3658 *Floyd L. Carlisle—For Respondents—Cross*

Q. And did you and Mr. Tracy— A. It was after the Wagner Labor decision I am sure of that.

Q. Well, the Wagner Labor decision, as I recall it, came down the 12th of April. A. Well, I should say it was following that.

Q. It was following that? A. Yes.

Q. And did you meet with Mr. Tracy alone? A. Yes, I talked with Mr. Tracy alone the first time that I met him.

3659 S. M. 1459

Q. And what was the purpose of that conference? A. Mr. Tracy had requested it, he stated that with the Wagner Labor decision he hoped that the company now would give consideration to a contract with a National organization. I spent several hours discussing the type and nature of an agreement. I stated that the operations of the Public Utility, Electric and Gas and Steam Utility in a city like New York, that any agreement would have to be on the basis of no strikes, no sit-downs, no interruption of operations, and machinery for complete arbitration and settlement of grievances.

3660 He stated that he would enter into such an agreement and showed me various agreements that he had with other Public Utilities throughout the country that contained such provisions. I took those. I don't know that he had the actual contracts but within a period I saw contracts with the Georgia Power Company and the various other public utility companies and the basis of the contract that would protect the company from interruptions of service and its consumers from interruptions of service, and provided a complete method of settling grievances. I regarded that as of basic importance in the matter and we also discussed our relations with the International, with the #3 Local in New York. As

you know that is a relationship of long standing and very great importance in our operations. I felt then,

S. M. 1460

and I feel now, that it was the logical thing for us to make a contract with the International Brotherhood of Electrical Workers and when the terms of the grievances and the interruptions of service and hours and so on—we discussed everything but wages. In reference to wages, he said and I said that that was a matter that had got to be worked out by committees of men and it 3662
was left to be worked out by committees of men. Long discussions were had with committees of men and the contract of June 15th was the evolution of those.

Q. Now, that then was the first conference, and when was the next conference before the 19th or 20th of April? A. I don't recollect whether it was one or two days before, it was very close to it.

Q. One or two days before the 19th or 20th? A. Yes.

Q. And was that too with Mr. Tracy alone? A. Well, I am not sure whether Mr. Low might have been present. 3663

Q. Who is Mr. Low? A. Mr. Low is the executive vice president of the Brooklyn Edison Company.

Q. And what was the purpose of that conference with Mr. Tracy? A. That was to further go into the details of clauses that would be inserted in a contract.

S. M. 1461

Q. And at either one of those conferences was there any discussion of membership? A. Of what?

Q. Of the I.B.E.W. in your system? A. No.

Q. Have you agreed at either one of those conference that a contract would be executed? A. No, the

understanding was that we would enter into collective bargaining with them on the basis other than wages that we had discussed. The question of wages would be taken up with committees of men. That presumed that those committees would come into existence. I think Mr. Tracy had, following the first conferences, a group of organizers in New York, #3 local had its organizers to work.

Q. Was it then that you discussed this matter and held upon the question of the execution of the contract
3665 until such time as Mr. Tracy did more organizational work in your system? A. Oh, no, no, the letter of April 20th was the action of the company to recognize the International Brotherhood as the collective bargaining agency.

Q. And that was without consideration or discussion of membership, is that right? A. Well, we knew that they had some members, they had the men that had been taken over from the New York Central operations, there were some men who had always had cards in the

S. M. 1462

3666 International Brotherhood of Electrical Workers.

Q. And was your willingness to execute these contracts based on your own information regarding this membership? A. Why, it was very general information, we knew that the New York Central belonged to the International Brotherhood of Electrical Workers, we knew that certain people in the construction division that had come to the company or gone out of it in construction work were members of the International Brotherhood.

Q. And this information, you say, was general information about which you were advised? A. There was no counting of noses as to how many persons were

then members of the International Brotherhood, if that's what you mean.

Q. That's right. Well, was there a submission or execution of the question of the number of employees who would be covered by this contract? A. Oh, yes, that was very clearly discussed.

Q. That was? A. The contract provided that it was only to cover those that were members. We having entered into a collective bargaining arrangement, presumably organization work, would proceed.

Q. At the time you recognized the I.B.E.W., were 3668
there locals of the I.B.E.W. in existence in the system? A. I knew of none.

S. M. 1463

Q. At the time of the execution of the contract, such locals were in existence? Is that right? A. They were.

Q. So that that organizational work took place after your initial recognition? A. That is true.

Q. And can you tell me when the first contract was executed? A. I don't recall the date. I think perhaps four or five days prior to June 15th, the June 15th contract. 3669

Judge Ransom: Well, I think the dates were different dates as to different companies.

Q. Can you tell me when the Consolidated Edison Company's contract was executed? A. Well, I assume that that was executed on the 15th. Am I wrong in that? I went away on the 18th of June and it was executed prior to that time, as I recall. I did not sign it.

Judge Ransom: My impression is that it was before the 15th.

The Witness: This copy that I have here—

3670 *Floyd L. Carlisle—For Respondents—Cross*

Q. (By Mr. Moscovitz) Do you recall when the first contract was executed? A. I do not recall. They were within two or three days of each other, as I remember.

Q. Were there separate contracts executed for each

S. M. 1464

one of the respondent companies? A. There were.

Q. And were those separate contracts executed within a day or two of each other? A. Well, within a very short interval.

3671 Q. Yes. A. The only difference that arose, the New York Edison Local that covered the Electrical Workers, the discussion led to a change in the character of the general wage increase. Prior to that time it was, as I recollect—I have been away seventeen days, and my mind isn't quite clear, but there was an alteration made, after discussion had been had, the effect of which was to increase at a greater rate than five per cent people who were under $40.00 a week, and that alteration was then made effective over all the contracts.

Q. Were the contracts then all executed in June? A. Oh, yes.

3672 Q. And were they all executed in June in the week preceding the 15th of June? A. I think so.

Q. Or were there some executed after June 15th? A. Well, I don't know. I went away on the 18th—

Judge Ransom: I find, for example, that the New York and Queens Electric Light and Power Company agreement with Local Union B-839, was apparently executed on June 1st. The West-

S. M. 1465

chester and Yonkers agreements were evidently executed May 28th. The Brooklyn Edison agreement was

executed May 28th. I think these agreements show that with respect to those which had been executed at the end of May, or early in June, that after the conclusion of negotiations with the committee of electric employees of the Consolidated Edison, and the change which they brought about, riders were attached to the agreement that had already been executed, making the same provision operative. For example, I have before me the Brooklyn Edison agreement which was signed on May 28th but that has to it a rider, two riders, which were executed June 14th. Now, as to Brooklyn Edison, I as- 3674
sume that they were the same riders that were attached in the final signature to the Consolidated Edison agreement as of June 14th or 15th.

Q. (By Mr. Moscovitz) Now, at the time those contracts were executed, the Locals of the I.B.E.W. were in existence and signatories to the respective contracts. Is that right? A. That's right.

Q. And when you last met with Mr. Tracy, before your letter of recognition of April 20th, it was understood, was it not, that after he organized his men and secured local set-ups, that you would then sit down for the purpose of executing the necessary contracts? A. 3675
All questions of wages were to await the appointment of committees, the creation of locals, and that is what happened.

S. M. 1466

Q. Yes. And did you meet again with Mr. Tracy after April 19th? A. Yes.

Q. Did you meet with him for the purpose of executing these contracts? A. No. There were further changes made in a general character. One as I recollect covered vacations. He stated that the employees wanted that more specific, or, I forget what the details were, but they were details of the contract.

3676 *Floyd L. Carlisle—For Respondents—Cross*

Q. Did you handle all the negotiations yourself personally? A. Why, I sat in, I think, for every important discussion.

Q. And with whom did you hold discussions regarding the terms of the contracts? A. Wages?

Q. Yes. A. Well, I don't remember the name of each—

Q. Were they committees of employees? A. I did not sit in with the committees other than those in the Consolidated Edison Electric and Gas, principally elec-
3677 tric. That was the biggest one.

Q. Now, were they, were those meetings with committees of employees? A. Those were meetings of some dozen or more people whom I understood had been appointed a committee by the local that had been chartered.

S. M. 1467

Q. Yes, but was it a committee of employees? A. There was no one there, as I recall, except employees. I may be wrong on that. I think I am wrong on that. Employees who had become full-paid representatives of their locals were there.

3678 Q. In other words, employees who had become organizers for the I.B.E.W.? A. Well, the great bulk of the committee were employees, but there may have been, probably were, men who were no longer on our payroll but who were working for the I.B.E.W., who had formerly been on our payroll.

Q. Yes, and do you recall specifically the names of any of those employees? A. Well, I assume that these names signed on the contracts—if I had the electrical contract, I could tell you.

(Counsel hands witness electrical contract.)

A. Well, Mr. Delvac, for instance, as I understood it, was

the chairman of a committee of local No. B-829, which was the electric local, for the Consolidated Edison Company and he certainly was there.

Q. Was Mr. Ganley there? A. I think Mr. Ganley was there on one occasion. He was not there on all occasions.

Q. Mr. Parker? A. Well, Mr. Parker did not sit in with the meetings of the electric local. He was in the

S. M. 1468

3680

gas local.

Q. Were the employees who attended these conferences with you persons who had formerly been officers of the E.R.P.? A. Why, some of them were, I am sure. I don't know that all of them were.

Q. Well, as a matter of fact, weren't they all men who had formerly acted as general councilmen of the E.R.P.? A. Well, I wouldn't know that.

Q. Mr. Ganley, with whom you met on these questions, was formerly chairman of the general council, was he not?

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Judge Ransom: Mr. Ganley was not one of the signers.

The Witness: Mr. Ganley was not on the committee that we negotiated with.

Q. (By Mr. Moscovitz) In what meetings did Mr. Ganley sit? A. Mr. Ganley came into one meeting.

Q. One meeting? A. Yes.

Q. Do you recall what meeting that was? A. Why, that was a meeting at which the discussion was giving a greater increase to the men in the lower rates of pay and a less increase to the men in the higher rates of pay. He was in there during a portion, at least, of that discussion.

Q. And in consideration of what contract was that, for what company? A. New York Edison Electric.

3682 *Floyd L. Carlisle—For Respondents—Cross*

S. M. 1469

Q. Mr. Ganley was formerly chairman of the general council of the E.R.P., was he not? A. Why that was the meeting at which the discussion was giving a greater increase to the men in the lower rates of pay, and a less increase to the men in the higher rates of pay. He was in there during a portion, at least, of that discussion.

Q. And in consideration of what contract was that, for what company? A. New York Edison Electric.

3683 Q. Mr. Ganley was formerly chairman of the general council of the E.R.P., was he not? A. Yes.

Q. And he is now a general organizer for the I.B. E.W., is he not? A. I do not know that.

Q. Do you know the personnel of any of the other committees with whom you met? A. I do not.

Q. During this period of time? A. No, I cannot give you the names now.

Judge Ransom: I may say that I expect to offer in evidence each of these other agreements, and each of them shows the names of the committee chosen by the employees to sign and

3684 negotiate.

Mr. Moscovitz: Do you want to put them in now?

S. M. 1470

Judge Ransom: I have here all except the Consolidated Subway. If you wish, I will offer them now, then you may have them.

I offer in evidence the memorandum of agreement between the Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, through Local Union B-830.

(Document referred to marked respondent's exhibit #17 for identification, Witness Carlisle)

Judge Ransom: I offer the same memorandum agreement between Consolidated Edison Company of New York, Inc. and the International Brotherhood of Electrical Workers, through Local B-829.

(Document referred to marked respondent's exhibit #18, witness Carlisle)

Judge Ransom: The agreement between 3686
Brooklyn Edison and Local Union B-825, effective May 28th, 1937.

(Document referred to marked respondent's exhibit #19 for identification, Witness Carlisle)

Judge Ransom: The agreement between New York and Queens Electric Light and Power and Local B-839, effective June 1st, 1937.

(Document referred to marked respondent's exhibit #20 for identification, Witness Carlisle)

Judge Ransom: The agreement between West-

S. M. 1471 3687

chester Lighting Company and the Yonkers Light and Power Company and Local B-832, effective May 28th, 1937.

(Document referred to marked respondent's exhibit #21 for identification, Witness Carlisle)

Judge Ransom: The memorandum agreement between New York Steam Corporation and the International Brotherhood of Electric Workers through Local B-826, effective June 16, 1937

(Document referred to marked respondent's exhibit #22 for identification, Witness Carlisle)

3688

Judge Ransom: I shall ask leave to supply and mark later the agreement which is not here, of which I have copies, I think, in the office, the one with the Consolidated Subway Company.

Mr. Moscovitz: May I have, Mr. Examiner, a five minute recess for looking over these contracts?

Trial Examiner Gates: Leave is granted to introduce later the contract in question, meantime these are received in evidence.

3689

(Documents referred to received in evidence marked respectively respondents #17 to #22 inclusive, Witness Carlisle)

(Whereupon a five minute recess was taken)

After Recess

Q. (By Mr. Moscovitz) Now, as I understand it, Mr. Carlisle, these negotiations after your letter of recogni-

S. M. 1472

tion and before the contracts were executed, were carried
3690 on in the respective companies by the committees, negotiated by committees of employees from those companies? A. From those companies and from the locals of those companies, as I understand it.

Q. I also understand that each company has a separate local? A. That is correct, and the Consolidated Edison Company has two, one covering gas employees and the other the electric.

Judge Ransom: And in Westchester, the Westchester Lighting Company and in Yonkers, the Electric Light and Power Company, their employees together have one local.

Q. (By Mr. Moscovitz) Do you recall whether or not any officers of the I.B.E.W. sat with the committees of employees during these negotiations? A. Why I think on one occasion Mr. Tracy sat in.

Q. And do you recall in what company that was? A. I think it was a group of committeemen from more than one company, I think the Consolidated Edison Electric was there, I think there was somebody from Brooklyn, somebody from Queens, I don't believe that every company was represented, but I am not sure.

Q. And did you attend that conference? A. I did. 3692

Q. Do you recall when it was, approximately? A. Well, I would think it was prior to the 28th of May.

S. M. 1473

Q. Immediately prior to the 28th of May? A. Well, it may have been a week or two prior to that, I imagine ten days prior to it.

Q. Was that meeting for the purpose of discussing wage arrangements? A. Yes.

Q. All these meetings were for that same purpose? A. Yes, but there were some changes made in the wording of the clauses that dealt with pensions and vacations and sick benefits and so on. 3693

Q. When the contracts were executed, were they executed in the presence of yourself and the negotiating committees? A. I wasn't present when they were executed; they were executed by the officers in the different companies other than myself.

Q. And with the respective local union officers, is that right? A. Well, committees or officers, I don't know which.

Q. Now, in the Consolidated Edison Company agreement, Local B-830, which became effective June 15th, 1937, you had signatures of the local unions by George

3694 *Floyd L. Carlisle—For Respondents—Cross*

T. Parker and he was formerly a general councilman of the E.R.P., was he not? A. Yes.

Q. And Joseph A. Fisher, he was also formerly a general councilman of the E.R.P.? A. I don't know that of my own knowledge.

S. M. 1474

Q. Do you know about Frederick G. Buchner? A. I don't know.

3695 Q. So that you are not entirely familiar with what offices these employees may have held in the E.R.P.? A. That is right.

Q. And that would go for the signatories to the other agreements? A. That's right, that is true.

Mr. Ransom: There is a list of those general council members in evidence?

Mr. Moscovitz: That is right.

Judge Ransom: So you can see in how few instances the committees were the former general councilman.

3696 Q. (By Mr. Moscovitz) Do you know, Mr. Carlisle, whether or not these officers of the local with whom you were negotiating were still on your payroll at that time? A. I don't know.

Q. Now, will you tell us how Mr. Tracy first came to your attention? A. Well, as I recollect it, Mr. Brunaset had sent me a telegram some few weeks before.

Q. Who? A. Brunaset, he is the vice president, I think, of the International Brotherhood of Electrical Workers.

S. M. 1475

Q. Had you known him before? A. Yes. I have seen him many, many times.

Q. Yes. A. He came to New York, I did not see him. I was busy with something else and an arrangement was made whereby Mr. Tracy would come over and I met him.

Q. And when did you hear from Mr. Brunaset? A. I don't recall, I think he either tried to get me on the telephone, I think that was the method of communication, I don't think he telegraphed me.

Q. You don't recall when it was? A. My best recollection would be it was perhaps a couple of weeks or three weeks prior to the time that I first met Mr. Tracy. 3698

Q. And it was he then that arranged your meeting between yourself and Mr. Tracy? A. Well, I met Mr. Tracy at Mr. Low's apartment on Park Avenue.

Q. And Mr. Low is the executive vice president of the company? A. Brooklyn Edison.

Q. Brooklyn Edison Company? A. Yes.

Q. Was it at that Park Avenue address that the first conference took place to which you have already referred? A. Yes.

Q. And was the second conference held at the same place? A. Yes.

S. M. 1476 3699

Q. And were there any other conferences at the same address? A. Well, I met Mr. Tracy once or twice at his room at the Roosevelt Hotel afterwards and he came once into the building and met with us.

Q. And this was all before the 19th of April? A. No, no, I only had two meetings with Mr. Tracy prior to that time.

Q. When were these other meetings? A. They were subsequent.

Q. Subsequent? A. Yes.

Q. Now, the contracts which were executed you say

3700 provided that employees who are members of the I.B.E.W. shall be represented by the I.B.E.W., is that right? A. Well, the contract speaks for itself.

Q. Well, as I recall you testified before, despite the fact that the contract speaks for itself, that the contract covered only members of the I.B.E.W.? A. The contract provides in substance that it is applicable to and applies, covers the men who are members of the I.B.E.W.

Q. And that it also does not close the door of any individual employee or group of employees from submit-

3701

S. M. 1477

ting grievances to management? A. My understanding is very definite and clear so far as the collective bargaining agreement is concerned. It is executed with the I.B.E.W. Now, grievances that arise with members of the I.B.E.W. are presented under the terms of this contract. If there is an employee who is not a member of the I.B.E.W. and he has some grievance that he wishes to discuss with the management we will discuss it with him but it is related to his individual affairs and not in connection with any other organization that he may be a

3702 member of.

Q. So that the company in the contract permits the employees to take grievances up with management? A. As individuals.

Q. As individuals? A. Yes.

Q. May they take grievances up with management as members of a different labor organization? A. No.

S. M. 1478

Q. And doesn't the contract prohibit the activity, the representative activity, of other labor organizations? A. The contract, I have the unfortunate situation of having been a lawyer myself, and I would say, that the contract speaks for itself. It is very clear.

3703

Q. Yes. Well, you do say, however, that employees cannot be represented by other labor organizations in the submission of grievances. Now, do you also say that other employees cannot be represented, if they so desire, by a different labor organization? A. Why, we have nothing in this contract that prohibits a man from joining any labor organization or not, as he wants. However, as I understand collective bargaining, as I understand the law of the state under which we are operating, this is our collective bargaining contract, and no other.

3704

Q. I see. A. But an individual can't present any grievance that he pleases.

Q. Yes. And that, despite the fact that the contract only speaks for employees who belong to a labor organization and not for a majority of the employees? A. We have entered into what I regard as a completely, all-embracing, collective bargaining arrangement, and this is the only one that we concentrate. Now, the State law is very clear in its provision that a majority rules.

S. M. 1479

3705

Q. Yes, and— A. Within those ranges, I think you understand what my point of view is.

Q. Yes, but the State law and the Federal law provide that the majority rules. Your contract provides that only employees who belong to the particular labor organization shall be represented? A. That's true.

Q. Yes. And so that would bar, under your understanding of the situation, the majority of employees from being represented if the I.B.E.W. only represented a minority? A. No, I wouldn't say that, but I would say that we have entered into this agreement and we consider it a complete compliance with the spirit of the law.

Q. Despite the fact that the contract has no majority provision and despite the fact that the I.B.E.W. at the

3706 time of the execution of the contract may have represented only a minority? A. Well, I don't know of my own knowledge at the time these contracts were executed, how many members they had. I believe that they had a majority, but I don't know.

Q. Was there any submission to you of evidence of that fact? A. No.

Q. Before the contract was executed? A. No.

S. M. 1480

3707 Q. And it was not until after the contracts were executed that there was submitted to you evidence of membership? A. Why, there were figures given to us. Mr. Tracy issued a statement in which he stated the number of members in the I.B.E.W. I saw those figures. I have no doubt that he told me on one or two occasions when I might have met him the number of members that they had.

Q. And do you recall when it was that it was brought to your attention that this membership roll was brought to your attention? A. I would assume that it was somewhere in the middle of May, perhaps.

3708 Q. And it was on the basis of what you might have heard in this regard that the contract was executed for all of the employees? A. Oh, no, When we wrote the letter to Mr. Tracy that we would engage in collective bargaining, there was no stipulation that they had to have any number of members. That was an organization that was clearly within the contemplation of the law and we signed it.

Q. Yes. So that— A. The fact that the wages were not agreed upon, neither Mr. Tracy nor myself nor any of the management wanted to execute the contract in reference to wages until committees had been created

S. M. 1481

and the thing was truly representative of what the men wanted, what they were dealing for.

Q. So you say it was in June of 1937, the 29th of June, that you were furnished by the I.B.E.W. with a statement of its membership in your companies?

Judge Ransom: He hadn't said that is the only time.

Mr. Moscovitz: Well, we will see. I understand Mr. Carlisle testified that he had heard of 3710
the membership roll.

Judge Ransom: It was published in the paper.

Mr. Moscovitz: Yes, but I am surprised that an important official of an important system would execute an agreement in such a responsible situation on a mere statement that he read in the newspaper, so I would appreciate a little more inquiry.

Q. (By Mr. Moscovitz) Then, it was in June of 1937, on the 29th, that you did receive a statement of membership from the I.B.E.W. Is that right, Mr. Carlisle? A. Well, I wasn't here then. That statement was handed to some one within the company and was prepared by the 3711
I.B.E.W.

Q. Now, had you received any other statement from them before that date? A. I don't recollect that we had received any formal statement, but Mr. Tracy had stated that there were so many members in this company and that company and the other company, and I assume that that was none of our business.

S. M. 1482

Q. Yes. And, well, did Mr. Tracy say to you that he represented a majority of your employees at the time the contract was executed? A. I did not discuss these

contracts. I did not see Mr. Tracy within probably ten days prior to their execution. I don't know what was said.

Q. Well, at the time you discussed with Mr. Tracy these collective agreement arrangements, did he make any statement to you on the question of whether or not his organization represented the majority of your employees? A. Why, he told me, I am quite sure, that his organization did, as far back as the first of June, represent a majority of the employees in each company, some
3713 greater in one, some ratios differed.

Q. That being the case, Mr. Carlisle, why was it that the contract does not speak for the majority of the employees and only speaks for such employees as Mr. Tracy represents? A. Why, this is a very usual, very normal contract. Unless the closed shop is put into a labor contract, anything that provides for a ratio to be maintained is subject to change at any time.

Q. But under both the State Act and the Federal Act, Mr. Carlisle, contracts that you have executed, despite what you have stated, would permit, would they not, other labor organizations representing the majority to
3714 come to you and ask you for a collective agreement? A.

S. M. 1483

Why, if it became important as to whether or no a given labor organization represented a majority, it would come up at some time when that question naturally was important.

Q. I see. So that it was not considered as an important point at the time of the execution of these contracts? A. Why, it was not a controlling reason in the entering into collective bargaining arrangements.

Q. Now, you testified, Mr. Carlisle, that as far back as June 1st, you were notified that the authorization rep-

resented a majority of the employees. Is that right? A. That is my recollection.

Q. Yes. And you also testified that when you recognized the I.B.E.W. in April, that its organizational activity and the setting up of its locals and so on, was yet to be finished. A. That is right.

Q. And that no locals were in existence? A. That is right.

Q. Now, were you in the period of time from the recognition of the I.B.E.W. until June 1st being advised of the progress of the organization in the respective companies? A. I think I saw Mr. Tracy three times during that period, I had no doubt, I don't clearly recollect, that he stated the number of members that they had, they would open offices, they were very active and I did not 3716

S. M. 1484

get reports other than through him.

Q. And were you advised of the fact that the I.B.E.W. had set up offices in the Salmon Building? A. Well, I did not know the place of their office. Mr. Tracy told me I think of the number of offices that had been opened.

Q. And were any of these offices that were set up in offices which had been previously utilized by the Consolidated Edison Company? A. I don't think so, I don't know of any, maybe outside of the building, and I don't know now where they would have been. 3717

Q. Were you advised that during the period between April 19th and June 1st that organizational activity was in progress in the respective companies to which you have been referring? A. Why, of course.

Q. Did you know, too, that the former general councilmen of the E.R.P. was engaged in this activity? A. I did not know that.

Q. Did you know that these general councilmen en-

3718

gaged in this activity were being supported under the system which was in existence under the E.R.P. by the company? A. Well, I am very sure of that, that so far as the company was concerned, any clean-up of the employees representation plan was a clean-up of that plan and had no relation to the work of the I.B.E.W., or the

S. M. 1485

work that the I.B.E.W. might be doing.

3719 Q. Did you know that the I.B.E.W. had set up desks within the plants of the respective companies for the purpose of securing membership and soliciting membership and receiving dues? A. I know nothing of the kind.

Q. You did not know that those activities were being engaged in during the period of time to which I have referred?

Judge Ransom: I object to that question, there is slight claim of such thing, there is a claim of one day at 4 Irving Place and one day up in the Hell Gate Station.

Mr. Moscovitz: Well, my recollection is, Judge Ransom, that there is more evidence than that in

3720 the record and I am not sure the record speaks for itself.

Trial Examiner Gates: The record may speak for itself.

The Witness: I don't know.

Trial Examiner Gates: It may stand.

Q. (By Mr. Moscovitz) Did you, Mr. Carlisle, after the execution of these contracts, receive word from the United Electrical Radio Workers? A. You mean, after June 5th?

Q. Yes. A. No, I sailed on the 18th of June and got back yesterday.

Q. Did you, then, before you sailed, at any time re-

S. M. 1486

ceive word from the U.E.R.W.? A. I did not—

Judge Ransom: You mean after the signing of the contract?

The Witness: After the signing of the contract?

Mr. Moscovitz: That's right.

The Witness: Why, I have no recollection of 3722
that, I don't think I did.

Q. (By Mr. Moscovitz) All right, did you after recognition of the I.B.E.W. on the 20th of April receive word from the U.E.R.W.? A. Yes.

Q. Do you recall when it was? A. When it was?

Q. Yes. A. Well, shortly after the 20th of April.

Q. And what was this word? A. It was a letter, I don't know, I don't recall its term, but asking for a conference.

Q. And do you recall who it was signed by? A. Well, I think it was signed by the secretary of the organization and not by Mr. Carey, but I am not sure. 3723

Q. By Julius Amsbach, the general secretary? A. I don't recollect the name, but it was signed by some officer.

S. M. 1487

Q. And the request was for a conference for the purpose of considering a contract? A. Yes, sir, that was its intent.

Q. And what did you do regarding that letter? A. I didn't answer it.

Q. And did you after that receive another communication from the U.E.R.W.? A. Well, I don't recollect it now.

3724 *Floyd L. Carlisle—For Respondents—Cross*

Q. Weren't other registered letters from the U.E. R.W. to you which you did not open and which you did not accept, rather? A. Well, I am sure I opened every letter that came by registered mail, but I did not answer, I did not communicate with them.

Q. That letter from the C.I.O. was received when, in relation to the time when you recognized the I.B.E.W.? A. Well, to my recollection, don't hold me to this, my recollection would be within 48 hours, it might have been less and it might have been longer.

3725 Q. And that was at the time that you did not know—strike it out, please. Had you outside of the statement made by Mr. Carey, the president of the U.E.R.W., which as I recall you testified was before April 19, 1937, and this letter from the C.I.O., which you did not answer, receive any other communication? A. Well, I don't remember, I may have.

S. M. 1488

Q. Did you receive any communication before the 19th of April? A. I don't remember.

Q. And the only recollection you have is of having
3726 read Mr. Carey's statement that he was trying to organize the system? A. Yes.

Q. And it was following that, that these developments concerning which you have testified took place? A. Well, my reading of Mr. Carey's activities, I don't relate them to this matter at all. Our decision to do what we did was entirely specifically related to the decision of the United States Supreme Court in the Wagner Act, and when that decision came down we then discussed the matter with our people and decided that we were going to certainly—could not in view of the imminent passage of the State Act go along with the plan that had been in existence since the NRA days.

3727

Q. Well, all the decision of the United States Supreme Court did for you, Mr. Carlisle, as I understand it, was to cause the important decision to dissolve or do away with employee representation plan? A. That is true, but to carry on collective bargaining after that required something beyond, something new.

Q. And it required there, consistent with the spirit of the decision which you have referred to, a recognition of the free expression by your employees and their desire

S. M. 1489

3728

to be organized and represented, isn't that so? A. Well, the State Act which we read with great care and which we believe to be the act under which we would operate defined labor organizations. In its definition I saw no possible continuation of the employee representation plan, or reconstruction of the labor organization under that act from that plan, or our right to participate in any degree in the formation of any plan or any suggestion of any kind.

We therefore entered into this arrangement which we did, with an organization which clearly is legal under the Act.

3729

Q. And the Federal Act also has similar provisions, doesn't it? A. Yes.

Q. And if it was your desire to subscribe to the spirit of the decision in the Supreme Court, then the employees representation plan should have been eliminated some time before, isn't that so, because after all it was the Federal Act that was before the United States Supreme Court? A. Let me put it this way: The employee representation plan had been set up by the employees, it had been in operation for a period of three years. The amount of thought that we gave to it in view of the large number of employees was very small. We gave them

3730 *Floyd L. Carlisle—For Respondents—Cross*

S. M. 1490

room space, we gave them such stenographic help as they needed, where elections were held and printing was necessary, we paid for that. I never regarded that as being a thing that amounted to in any degree to coercion or subsidy or otherwise. When the Wagner Labor decision was made and the Doyle Act which was to be its companion act and the administration at Washington urged the states to pass acts that would cover cases where people were not under the National Act, we ad-
3731 vised them to act.

Q. And the Act was the removal of the employee representation plan? A. That's right.

Q. And the immediate substitution therefor of this other labor organization which you now are in contractual relationship with? A. It was not a substitution for. We did not know how many members would join the I.B.E.W. There was no question about that. They were an organization purely within the law. We had had important relationships with the No. 3 local in all the work which is very huge, that we did in the change-over of consumer premises, we had long standing re-
3732 lationships with them.

Q. Were those relationships contractual? A. They were relations which had the form of exchange of letters. Our agreement in substance was this: That none

S. M. 1491

of our men would do work on the premises of a customer where it was a change-over of anything for the purpose of going off from the D.C. distribution system to the alternating current system. That ran into many millions of dollars a year.

Judge Ransom: I will produce a copy of that agreement, if you wish.

The Witness: We would have to continue that in the future.

Q. (By Mr. Moscovitz) That was not a collective bargaining contract, was it? A. No, but it was a very normal and natural thing.

Q. It had something to do with construction, didn't it? A. Well, but the time between where the company is spending normally $40,000,000. a year in expansion program, there has been a policy of changing over the apparatus on consumer premises. There was a dead- 3734
line agreed to across which they would not go. There was also an understanding that that constituted a workable arrangement between the Edison Company and the I.B.E.W., when it came to a situation where a major change had to be made, why—

Q. Yes. Were these— A. I had no other thought in my mind but what the logical, natural and proper arrangement was to make the arrangement with the I.B.E.W.

S. M. 1492

Q. Yes. But this local No. 3 arrangement, so that I can be clear in my mind, was not a collective bargain- 3735
ing arrangement. It was simply a construction arrangement so there wouldn't be any— A. It was an agreement whereby we would not put our own men into work that otherwise would be very natural and very logical for us to do.

Q. Yes. A. To that extent it was a recognition, and a very decided recognition.

Q. Was it a relationship where the I.B.E.W. was representing your employees? A. No.

Q. They acted as what? A. No, but it had the effect of work that the company paid for being done by Local No. 3.

3736 *Floyd L. Carlisle—For Respondents—Redirect*

Q. Yes. That's all.

REDIRECT EXAMINATION:

Q. (By Judge Ransom) Mr. Carlisle, you spoke about taking over New York Central employees in 1936, employees who were members of the American Federation of Labor in the I.B.E.W. Did your company or group of companies in the latter part of 1936 acquire two generating stations from the New York Central Railroad? A. We did.

3737

S. M. 1493

Q. One of them by outright purchase being the so-called Glenwood Station? A. We purchased the station in Yonkers.

Q. Yes. And the other you leased? A. Yes.

Q. For operation? A. That is correct.

Q. And in those acquisitions of generating stations, did you take over the employees? A. We did.

Q. And as you understood the matter, were those employees of the New York Central Railroad Company whom you took over in their two generating stations

3738 members of the I.B.E.W.? A. That is what we were told, and that is what we understood.

Q. You were asked about the collective bargaining situation in this group of companies prior to 1933? A. Yes.

Q. Do you know to what extent in generating stations and the like, there were systems of grievance committees operative for collective bargaining purposes? A. You mean under the—

Q. Before there was any E.R.P.? A. I knew there were machinery that presented grievances through committees, but that was before my time.

Q. Was the willingness of the I.B.E.W. to erect ma-

S. M. 1494

chinery to prevent interruption of your service by labor disputes, one of the inducing factors in recognition of the I.B.E.W.? A. It was.

Q. Mr. Moscovitz asked you whether at the time your recognition of the I.B.E.W. was evidenced by letter, these various local unions of the I.B.E.W. has been chartered, and you said that you understood that that took place. At the time you recognized the I.B.E.W., were there one or more local unions of the I.B.E.W. already in this New York City territory? A. In our companies? 3740

Q. No, in the territory. A. Oh, yes.

Q. I mean, there was a local No. 3, but the charters had not at that time been granted for one local to each group of company employees? A. That's right.

Q. The agreement under which certain types and classes of work were placed in the hands of the members of the I.B.E.W. was made by the New York Edison Company in 1924; was it not? A. That's right.

Q. And I ask you whether you recognize that as a copy of the letters which were exchanged between the company, the I.B.E.W., and the Building Trade Council? A. I do. 3741

S. M. 1495

Q. In April of 1937, and at all time since 1924, has that agreement been in effect? A. It had.

Q. And it is still in effect? A. It is.

Q. And would you say that it has been lived up to during that period by both sides? I mean, has the contract been complied with? A. It has worked in practice to the benefit, I believe, of the company and of the No. 3 local.

3742 *Floyd L. Carlisle—For Respondents—Redirect*

Q. Questions have arisen under it, but have been settled under it? A. That is correct.

Judge Ransom: I offer in evidence a copy of memorandum agreement between the Inside Electrical Workers Union, Local No. 3 and the New York Edison Company, endorsed by the Building Trades Council.

Mr. Moscovitz: May I see it?

No objection.

3743 Trial Examiner Gates: Admitted.

(Document referred to received in evidence and marked Respondent's Exhibit 23, Witness Carlisle.)

Q. (By Judge Ransom) Were all of these contracts of collective bargaining agreements, executed in behalf of the employees by Mr. Tracy and also by a com-

S. M. 1498

mittee authorized by the local union, as you understand it? A. They were.

3744 Q. And an exception possibly to the status of the committee being that in Westchester County where temporary officers had been empowered instead of a specific committee? A. That is correct.

Q. Did you know or were you told as to whether the agreements themselves were in any or all instances placed before the members of the local union and acted upon by them? A. Well, I don't know, but that was my understanding.

Q. That was reported to you? A. Yes.

Judge Ransom: That is all.

3745

RECROSS EXAMINATION:

Q. (By Mr. Moscovitz) There is a question I would like to ask you, Mr. Carlisle, regarding this pamphlet, Respondent's Exhibit No. 23. Of course, it is one that I have seen before. If I can just have a moment to get the paragraph on it.

Q. This agreement that you have with the I.B.E.W. is an agreement that the I.B.E.W. will not organize your employees; isn't it, Mr. Carlisle? A. Why, the effect of that agreement was that No. 3 local would not

3746

organize any of our employees and we would not do any work on the premises of others than ourselves.

Q. So far as this memorandum agreement of 1924

S. M. 1497

it was agreed that the International Brotherhood of Electrical Workers with whom you now have an agreement—

Judge Ransom: Local No. 3?

Mr. Moscovitz: Would not organize the employees?

The Witness: Local No. 3 is entirely different, an entirely different status, that is primarily

3747

a construction proposition, and when the decision of the Wagner Labor Act and the imminence of the State Act was seen, it was evident that that contract would not fit the situation.

Q. (By Moscovitz) This contract was executed in 1924? A. That is true.

Q. And lasted how long? A. It is 13 years, isn't it?

Q. 13 years. A. Yes.

Q. When did this agreement which was—under this agreement which was with Local No. 3, it was provided that the local would not take steps to organize your employees? A. That's right.

3748 *Floyd L. Carlisle—For Respondents—Recross*

Mr. Moscovitz: That's all.

Q. (By Mr. Ransom) And the division of the work between your employees and outside employees as to work on consumer premises running into many millions of dollars is still governed by this agreement? A. That's right.

S. M. 1498

Q. Under that agreement, that work is done by the
3749 American Federation of Labor through the I.B.E.W. and the Building Trades Council? A. That's correct.

Examination by Trial Examiner Gates:

Q. (By the Trial Examiner) There were some wage increases granted or other presumed benefits to the employees under the new contracts of the I.B.E.W. Is that correct? A. Oh, yes.

Q. And those applied to all employees whether members of the I.B.E.W. or not? A. It did.

Q. Earlier in your testimony you stated that you had a letter from Mr. Tracy, and I understood you to say it
3750 was from Mr. John Tracy. A. That is wrong, it is Daniel W. Tracy, I misspoke myself.

Q. In two or three places you referred to "the company." I think from the context it was fairly clear that you were referring to the whole system and the group of companies? A. Yes, that's correct.

Trial Examiner's Gates: That's all.

Q. (By Mr. Ransom) There is one matter that may not be completely clear on the record, with respect to the contract of the Con. Edison Company with Local Union B-830, which appears to have been executed on or about

S. M. 1499

June 15th and effective as of that date, did the committee of employees, did the committee of electric employees local union and those other committee members who participated in those negotiations secure a different and more favorable wage provision than had been negotiated up to that time as to the contracts already signed? A. They did.

Q. And did you then agree with Mr. Tracy and with the committees of the local unions which had already executed contracts prior to June 15th that the same riders 3752
with these wage terms should be incorporated into and made a part of the contracts which had already been executed in the case of the two or three companies? A. That's correct.

Q. So that the collective bargaining which took place between the Consolidated Edison Company and the committee of the local union of electrical employees of that company, produced this rider which is shown in all the copies of these contracts as having in some instances been put in after the date of execution of the original contract? A. That's right.

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Judge Ransom: That is all.

Trial Examiner Gates: I think that is all.

(Witness excused.)

Trial Examiner Gates: We will recess until 1:45 p. m.

S. M. 1500

(Whereupon, a recess was taken at 12:45 p. m. until 1:45 o'clock p. m. of the same day, July 6, 1937.)

3754

Proceedings

AFTERNOON SESSION

Trial Examiner Gates: Proceed.

Judge Ransom: I am not sure whether Board Exhibit #8 has been received in evidence or not, but to be sure of it I will offer Exhibit 8 in evidence. That is the articles of the constitution and by-laws of the I.B.E.W.

Trial Examiner Gates: It will be admitted.

3755 (Document referred to received in evidence and marked Board's Exhibit No. 8.)

Judge Ransom: On examining the originals of Board's Exhibits 12 and 13, I find that they have only been marked for identification, they being the letters exchanged through Mr. Carlisle and Mr. D. W. Tracy, or between them. I offer them in evidence.

Trial Examiner Gates: They are admitted.

(Documents previously marked Board's Exhibits 12 and 13 for identification received in evidence.)

3756 Judge Ransom: I offer in evidence Respondent's Exhibit 11 for identification.

Trial Examiner Gates: It will be received in evidence.

(Document referred to received in evidence and marked Respondent's Exhibit No. 11.)

S. M. 1501

Judge Ransom: I take it that it is not necessary to offer the answers formally in evidence, is it, Mr. Moscovitz?

Mr. Moscovitz: It it is in evidence, as I recall.

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Judge Ransom: It is only marked for identification.

Mr. Moscovitz: Well, then, we had better make sure.

Judge Ransom: I offer in evidence Respondent's Exhibit 7 for identification, being the answer of the respondent.

Trial Examiner Gates: Is that a signed copy?

Judge Ransom: That is not. Have you ever produced one, the verified copy?

Mr. Moscovitz: No.

3758

Judge Ransom: All right, I will offer Respondent's 7 in evidence, and I think we can agree that one of the executed copies should be substituted for this copy here.

Mr. Moscoyitz: It has been checked in our offices and they are correct copies, but you would still like to have the original?

Trial Examiner Gates: It think it would be preferable.

Judge Ransom: All right, I will offer it on that basis, that one of the originals will be substituted.

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Trial Examiner Gates: Very well, it is admitted.

(Document referred to received in evidence and marked Respondent's Exhibit 7.)

Judge Ransom: I offer in evidence a pamphlet, entitled, "A Call for Special Vote by all Employ-

S. M. 1502

ees of the New York Edison Company and United Electric Light & Power Company, to be held on November 22, 1933, etc."

3760 *Harold C. Dean—For Respondents—Direct*

Trial Examiner Gates: It will be admitted if there is no objection.

(Document referred to received in evidence and marked Respondent's Exhibit 24.)

Judge Ransom: I will call Mr. Dean.

HAROLD C. DEAN, called as a witness for the re-
3761 spondents, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Ransom) Where do you live, Mr. Dean? A. Douglaston, Long Island.

Q. Are you now an officer of the Consolidated Edison Company of New York? A. I am an officer of the New York & Queens Electric Light & Power Company.

Q. What is your position with that company? A. Vice-president.

Q. How long have you been Vice-president? A. Since July, 1934.

3762 Q. Now, what was your position with that company before July, 1934? A. General superintendent.

Q. How long have you been employed by the company? A. Since 1916.

S. M. 1503

Q. In what field is your duties, I mean, are you an engineer or what? A. I am an engineer.

Q. And in 1934, '35 and '36 did your duties include supervision of the engineering work of that company? A. It did.

Q. As Vice-president, did you deal with employment problems, particularly with reference to engineering em-

ployees? A. Yes, in fact in general employment problems.

Q. Are you generally familiar with the testimony that has been given in this case relative to the terminations of the employment of Messrs. Wersing, Grulich, Wagner, Kennedy and Emler? A. I am.

Q. Are you familiar with the circumstances which prompted the termination of the employment of these men by the New York & Queens Electric Light & Power Company? A. I am.

Q. Where were Messrs. Wersing, Grulich and Wag- 3764
ner employed? A. They were employed in the work order bureau of the auditor's department.

Q. And where were Messrs. Kennedy and Emler employed? A. They were employed in the overhead bureau of the distribution department.

Q. Will you state for the record the general nature

S. M. 1504

and character of the work order bureau? A. The work order bureau had to deal with the allocation of charges to work orders, the keeping of the stores inventory, pricing and posting of material costs, distribution costs 3765
and so on.

Q. And this was one of the bureaus in the auditor's department? A. It was.

Q. Now, what were the assigned duties of Messrs. Wersing, Grulich and Wagner, if you know, taking Mr. Wersing first. A. Mr. Wersing was rated as clerk, second grade, in the pricing and posting section for the work order bureau, and he was one of 12 clerks, as I recollect, reporting to the clerk in charge in that bureau, or in that division.

Q. Was that the division of stores accounts? A. Yes, it was in the division of stores accounts: pricing and posting section.

3766 *Harold C. Dean—For Respondents—Direct*

Q. Now, what about Mr. Grulich, what were his assigfined duties? A. Mr. Grulich was clerk, second grade, in the same section of the same division, same bureau, the same department.

Q. And what was Mr. Wagner? A. Mr. Wagner was accounting assistant, first grade, in the analysis and report section of what is called the other order division of the work order bureau.

Q. Now, what does that consist of? A. Well, there

3767 S. M. 1505

were three accounting assistants first grade and three clerks there under a clerk in charge.

Q. And you said that the twelve clerks in the pricing and posting section reparted to a clerk in charge: to whom did the clerk in charge report? A. He reported to a Mr. Locke, who was chief of the stores account division.

Q. To whom did the clerk in charge of the analysis report section of the other order division report? A. He reported to Mr. Eller, who was chief of the other order division.

3768 Q. To whom did Mr. Locke and Mr. Eller report? A. They reported to Mr. Mehrtens, who is the supervisor of the bureau.

Q. That is Mehrtens? A. That's right.

Q. And to whom did Mr. Mehrtens report? A. He reported to Mr. Housenbower, who was auditor, in charge of the auditor's department.

Q. What is the general character of the work of the overhead bureau? A. The overhead bureau has to do with the installation and the removal of poles, wires, services, installations of meters and so on.

Q. Does it have anything to do with the installation

S. M. 1506

of conduits and cables? A. In recent years it has, due to lack of station overhead work, the men have been trained to install conduits and do underground splicing, secondary cable.

Q. What are the two main divisions of the overhead bureau? A. There is the Elmhurst section and the Jamaica section.

Q. what were the assigned duties of Mr. Kennedy and Mr. Emler in the overhead bureau? A. They are both rated as linemen, first grade, in the Elmhurst section of the overhead bureau? 3770

Q. Do you know, and did you know at the time, what was the reason for the laying off of those two employees? A. Yes, it was lack of—they were surplus employees, and there was plenty of employees for the work in hand.

Q. Were the positions that had been held by Mr. Kennedy and Emler left unfilled after their lay-off? A. They were.

Q. In the case of Wersing, Grulich and Wagner, were their positions left unfilled? A. No, not directly. Other employees were transferred to their positions, with the result that there were six positions left unfilled in the inventory department at that particular time. 3771

Q. Will you explain for the record what were the circumstances of that? Under what circumstances, and

S. M. 1507

for what reasons were men laid off in the work bureau and the men transferred from the inventory department to those places? A. Well, the inventory department was established September, 1934 as a result of the Public Service Commission's order requiring the permanent and continuing detailed inventory of property and as-

3772 *Harold C. Dean—For Respondents—Direct*

sociated costs. We had built that up from nothing to a maximum of about 222 employees.

Q. Well, let me ask you about that order. Did that order require both an inventory of the factory, and by inventory we mean listing by particular classifications,—did it require an inventory or listing of the property and also certain costs and accounting data related to original costs as defined by the Public Service Commission and the like to be applied to the inventory of the physical property? A. It did, and the order with re-
3773 spect to certain accounting divisions was protected by the company and certain other companies in the state and was finally annulled, but the order with respect to the maintenance of the inventory itself was upheld.

Q. Do you recall whether the questions of the validity of that order which required this inventory and this assembly of accounting data in relation to the inventory, was finally passed on by the Court of Appeals of the State of New York? A. I believe it was.

Q. And without expecting you, as an engineer, to go

S. M. 1508

3774 into the details of the decision, is it your understanding that the requirement in respect of the accounting data was annulled by the Court of Appeals, but the requirement for inventory merely was left in force? A. That is my understanding.

Q. Now, you said that the authorization that the New York & Queens Electric Light & Power Company had with this inventory and accounting work in relation to the inventory, was built up until by June of 1935 your company had how many employees? A. 222.

Q. Was that your all-time high on that work? A. Yes, that is my recollection. That is the all-time high.

Q. In connection with the work of the inventory

department on this physical listing of the property and the accumulation of costs data and associated data in relation to the inventory, did there come a time when it seemed clear that you should not proceed with the completion, or the correction, of the cost data as you had been going ahead with it? A. Yes, by July, 1934, it became clear that there was a question as to the basis of making up of this cost, what elements should be included in them, and also there was a question as to the units of inventory themselves, as to their possible increase in size, which made it appear that it was unwise 3776
for us to go ahead at the rate at which we had been going in carrying out this order.

S. M. 1509

Q. And in any event, by the summer of 1936, the matter reached such a stage that it was undesirable to continue with your full force that you had built up in the inventory department? A. That is so. That is the summer of 1935.

Q. Yes. And had the employees who were in this inventory department which had been built up for this particular work, had they been hired directly and from 3777
the outside for this work? A. No. In practically all cases advantage had been taken of the fact that there was a surplus of employees in other departments of the company and employees had been transferred from other departments through the inventory to do this work.

Q. So that the force which reached a maximum of 222 employees had almost entirely been built up by transfers from departments in which there was a surplus of employees and the possibility of transferring men to the inventory department? A. That is true. I have a record here of the sources from which we got those employees.

3778 *Harold C. Dean—For Respondents—Direct*

Q. Well, can you state from your record where the 222 came from? If you can, you may do so. A. From the distribution department, 82 were transferred.

Q. Yes. A. From the personnel, one.

S. M. 1510

Q. Yes. A. From the general service department, three.

Q. Yes. A. From the engineering department, 57.

Q. Yes. A. From the executive departments, 4.

3779 Q. Yes. A. From purchasing and stores, two.

Q. Yes. A. From the auditor's department, 32.

Q. Yes. A. From the treasurer's department, 16.

Q. Yes. A. From Consumer's Investments, 2.

Q. Yes. A. From meter and test, 3.

Q. Yes. A. Transportation, one.

Q. Yes. A. From sales, 4.

Q. Yes. A. From accounting, 12.

Q. Yes. A. There were three new employees. Those employees were principally office boys and people that

S. M. 1511

3780 were not available in other departments.

Q. And you have accounted for how many in total? A. 222.

Q. And of the 222, 219 were brought in to create the inventory department by transfer from other departments? A. That's true.

Q. What number of employees did you finally reduce the inventory department to which had a maximum of 222? A. We reduced it to 45.

Q. How many employees were laid off in order to effect this reduction? A. 42 were laid off directly from the inventory department. 135 were transferred back to other departments, and in those cases the other de-

partments had the responsibility to provide the vacancy in order to take these men back.

Q. How did you determine whether employees were to be laid off directly from the inventory department or transferred to other departments from which, as you say, employees would be released in order to enable these men to go back into those other departments? A. The record of employees in the inventory department who would have to be laid off otherwise were reviewed by the personnel department in conjunction with the other departments and if it appeared that there were 3782 other employees in other departments more desirable

from the point of view of efficiency and family responsibility than those in the inventory department, arrangement was made to transfer inventory department people back to the other departments and the other departments made the lay-offs.

Q. You spoke about the employees' records being reviewed by the personnel department in conjunction with other departments; do you mean the departments or the department heads of the department in which 3783 these men had previously worked before they came into their other capacity there? A. Usually so, yes.

Q. Usually with the departments where the men had worked before they were brought into this inventory department? A. That's right.

Q. You spoke of family responsibility; family responsibilities as shown by what? A. Oh, by the number of dependents they had, whether or not they were married.

Q. Was seniority considered at all in determining which employees were to be let out? A. Yes, other things being equal.

3784 *Harold C. Dean—For Respondents—Direct*

Q. But only if other things were equal? A. That is all, not the primary determination.

Q. So far as you have been stating about the situation that affected employees in the inventory department or in departments to which men were transferred

S. M. 1513

on the inventory department, what was the situation with respect to the overhead line bureau, or the overhead bureau, at the time Mr. Kennedy and Mr. Emler
3785 were let out and previous to that? A. The overhead line bureau had for several years had a surplus of employees, we had been gradually attempting to reduce that number. This surplus was brought about by the fact that in the first place there was less building construction going on, the number of real estate developments had dwindled to a very low number and we had been converting overhead lines to underground, curtailing the overhead and expanding the underground so there was less work for the overhead men.

Q. In the early history of the New York & Queens Electric Light & Power Company, before that bureau
3786 was built up as closely as it is now, had there been from time to time the development of large areas by real estate promoters or d velopers? A. Oh, yes.

Q. And did that sort of thing, that process in the earlier days of your company, lead to a great deal of overhead work on distribution lines? A. Yes, it did.

Q. In the pa few years, has the number and scope of those real estate developments been very much reduced? A. It has been and still is.

S. M. 1514

Q. Has that been both because of inactivity relatively in the real estate department and because of the

fact that the borough is becoming quite well built up anyway? A. Due to both.

Q. Now, likewise, in recent years in that borough with its large rise in population, have the borough authorities or the municipal authorities desired and required that substantial parts of your lines be put underground? A. They have asked that that be done and the company has done that.

Q. You have done that to a considerable extent? A. To a considerable extent during the depression we have done a large amount of conversion of overhead to underground wires. 3788

Q. That is a work that does not add to the volume of your business or the number of consumers? A. That is true.

Q. But it adds greatly to your capital cost? A. That is it.

Q. To what extent did you reduce the number of employees in the overhead, is it overhead line bureau? A. Overhead bureau of the distribution bureau, at least that is what its name was at that time.

Q. Well, can you give us any figures that indicate the extent of the reduction that you made in that bureau, 3789

S. M. 1515

say, beginning from '32 down, of 1932? A. Yes, on January 1, 1932, there was 402 employees in that bureau and on December 31st of 1936 there was 329, at the time Messrs. Kennedy and Emler were laid off, there were 336.

Mr. Moscovitz: What was the second figure, 399?

The Witness: 329.

Mr. Moscovitz: The other was 336?

3790 *Harold C. Dean—For Respondents—Direct*

Q. (By Mr. Ransom) 422 down to 329, isn't it? A. That is right.

Q. Well, had there at the same time been changes in the kind of work performed by the employees, linemen in the overhead bureau? A. Yes, we have broken the linemen in to doing underground work, we got men to install conduits and make splices in underground cable and run in underground services where services were changed over from overhead to underground, doing the wiring connections inside, between the service entrance
3791 and the meter.

Q. Well, was that shift in the kind of work done by the linemen in the overhead bureau to prevent the necessity of still further lay-offs? A. That was the object of it entirely.

Q. Did your company do anything about getting other work for Messrs. Kennedy and Emler when you

found that they would be laid off so far as your overhead bureau was concerned? A. Yes, our personnel director was in contact with the personnel director of
3792 the New York Edison Company, and on a number of occasions, when they had occasion to increase their force for any reason he was advised, and in a number of cases we had transferred employees from Queens to New York to fill vacancies there.

Q. On the construction forces? A. On the construction forces, it was not always the same kind of work that they were doing, but it was construction work.

Q. Well, did you get any word from the New York Edison people about their having jobs on which they would use wire men? A. Yes, at this time the personnel department of the New York Edison advised the Queens personnel department that they had a vacancy

for a few wire men, they asked if we had somebody that could be sent over to apply for the job. So our personnel director, our personnel department took the matter up with the distribution department and three men were selected to go over and interview the New York Edison Company.

The assistant supervisor of the New York Bureau of Queens Company told the men that they had this op-

S. M. 1517

portunity of getting good jobs in the New York Edison 3794
as wire men and sent them into the personnel department of the Queens Company.

Q. Of course, these men weren't wire men by listing or occupation? A. No, they weren't cable splicers either, but we thought that they knew enough to perform the duties of wire men in the construction bureau of the New York Edison Company.

Q. Well, is a wire man a higher or lower rating of employment? A. Well, it is comparable to—

Q. Or merely different? A. It is comparable in pay to the wire men, the wire men's work usually is inside and from some respects it is more desirable from that 3795
point of view, even the linemen do certain wiring, they hook up the meter from the service entrance to the meter cutout and do certain wiring work in transformer vaults. it is then common to transfer men back and forth, of course in both cases they must know the system, the danger of contacting the high voltage.

Q. Well, were Messrs. Kennedy and Emler among the men who had been referred to the New York Edison personnel director? A. Yes, they were sent over to the personnel department in New York, who referred them to the supervisor of the construction bureau of the New York Edison Company, and he asked them what

3796 *Harold C. Dean—For Respondents—Direct*

S. M. 1518

their experience had been. They said, "Well, we are just wire men, and we don't know anything about this work."

Q. Did they say they were wire men, or did they say— A. No, they said, "We are not wire men. We are line men," so that he interviewed them no more and sent them back to the personnel department of the Queens Company and the Queens Company had no further work for them, so they were laid off.

3797 Q. And what was done as to payment of a separate allowance? A. They were given two weeks' pay for each year of continuous employment with the company.

Q. Were you personally aware of the lay-offs or transfers that were made in this case, both as to Kennedy and as to Emler, and as to Grulich, Wagner and Wersing? A. Yes, I was familiar with the record. I reviewed the records in all cases.

Q. At that time? A. Yes.

Q. Were you aware of the union activities, of the activities in labor organizations, of these men? A. Well, in a general way I was. In the case of Wersing and

3798 Grulich, and of Kennedy and Emler, I was.

Q. Were you aware of the union membership and activities of other employees who are still with the company? A. Yes, in a general way, I recognized several men who have testified in this hearing, who are still em-

S. M. 1519

ployed by the company.

Q. Did you directly or indirectly cause any of these five men to be laid off because of any activities in labor unions or in respect of their membership or work for any organizations to which they belonged? A. No. In all cases they were laid off solely for the reason that

there was too many employees for the work to be done.

Q. If these particular five had not been laid off; would others have been laid off instead? A. Others would have had to be laid off. As you will see from the record, many were laid off besides these men.

Q. And were other employees laid off in addition to these? A. Yes, both before and after.

Q. In what year were Messrs. Wersing, Grulich and Wagner first employed by your company? A. In 1929.

Q. Was that a year in which a large number of employees were hired? A. Yes, the records show that we 3800
have more employees in the company whose term of employment commenced in that year than in any other year.

Q. Have you any information as to the length of service the employees in the inventory department in which it was necessary to make this large reduction in

S. M. 1520

force,—you spoke of 222 men being reduced down to 45— A. Yes, in the case of all the 42 men who were laid off directly from the inventory department, 13 of them had been employed in 1929, and 11 subsequent to 3801
1929; 18 prior to 1929. And of those who were transferred back to other departments, 31 had been employed in 1929; 45 subsequently thereto; and 59 prior thereto.

Q. That is, 59 of the men who were transferred back to other departments from the inventory department, when you cut down the size of the inventory department, 59 of them had been employed by the company prior to 1929 and continuously since? A. That's right.

Q. I believe that Mr. Wagner testified here that there were three employees in his bureau who were junior to him in length of service. He mentioned John Gloss, Vincent MacSavany, and Strauss. Have you checked

3802 that? A. In the case of Vincent MacSavanny and Strauss, they were employed in the same year as Mr. Wagner, but later. John Gloss was employed in January, 1930.

Q. In reviewing the record of Wersing, Grulich and Wagner, did you regard their work as outstanding, or as about average? A. Oh, just average in the case of Wersing and Grulich. Wagner was above average.

S. M. 1521

3803 Q. Did you consider the quality of their work in comparison with the six married men in the inventory department who have been laid off, who would have been laid off, rather, if you had not arranged to transfer them to the accounting department? A. Yes, I did, and in all cases the men who were transferred from the inventory department were better as employees, or at least as good, and in addition they were all married men.

Q. Was there seniority at least as long as that of Messrs. Wersing, Grulich and Wagner? A. In every case, all six of them.

Q. And they were married men? A. Messrs. Wers-
3804 ing, Grulich and Wagner were not married.

Q. These other men were married? A. That's true.

Q. Now, as to Kennedy and Emler. When were they employed? A. Kennedy's last date of employment was January 18, 1928.

Q. You mean his date of last employment? A. Date of last employment, yes.

Q. Emler? A. Emler was employed July 18, 1927.

Q. Now, you said that these men were first grade linemen at the time they were laid off. A. Yes.

Q. How many first grade linemen did the company have with longer or shorter terms of service? A. There

S. M. 1522

were 54 first grade linemen with longer terms of service. 12 were shorter. And 6 were in between Kennedy and Emler.

Q. Was there anything outstanding in the work of Kennedy and Emler? A. No, there was not. Their records, which have already been introduced here, will indicate that. In addition, Mr. Kennedy had a remarkably bad record for absences. He was, I recollect, away 22 per cent of the time the last year he was employed with us, 16 per cent of the time the year prior to that. 3806

Q. I show you Respondent's Exhibit No. 4 and 6 for identification, and ask you if those are the employees' rating cards, or copies of them, that were kept in the regular course of business with respect to those employees? A. Yes, those are their rating cards.

Q. And they were in departments which at that time, in your company, has had a system of employee rating such as these cards represent? A. That is true.

Judge Ransom: I offer in evidence Respondent's Exhibits 4 and 6 for identification.

Trial Examiner Gates: If there is no objection, they are admitted. 3807

S. M. 1523

(Documents previously marked Respondent's Exhibits 4 and 6 for identification now received in evidence, Witness Dean.)

CROSS EXAMINATION:

Q. (By Mr. Moscovitz) Mr. Dean, have you been in charge of the labor policies of the New York & Queens since July, 1934? A. Well, I wouldn't say I have been in charge of it. I have been vice-president and labor matters have been one of my particular considerations.

3808 *Harold C. Dean—For Respondents—Cross*

Judge Ransom: You said "employment matters."

Q. (By Mr. Moscovitz) Well, are you the person in office who handles such labor questions as arise? A. Not exclusively. I have been chairman of the management committee who has dealt with the employee representation plan in those days.

Q. Yes. And how long had you been in that position? A. Since about the middle of 1935, I would say.

3809 Q. And before that, were you a member of that committee in any way? A. No, I was not.

Q. Did you advise with the committee before that? A. Oh, yes, I was an officer of the company and most of these departments reported to me.

S. M. 1524

Q. And was it your job to be advised of important labor questions within your company? A. Oh, I would say so.

Q. Yes. And was it also your job to be advised of the operation of the Employee Representation Plan? A. Yes, at the time I was chairman of the management com-

3810 mittee that was so.

Q. And as chairman of the management committee, did you meet with the employees from time to time to take questions up which were submitted under the plan? A. With representatives of the employees, yes.

Q. And for how long a period of time did you hold that particular job? A. From about the middle of 1935, to the present.

Q. When you say to the present, what do you mean? A. Well, up to the termination of the employee representation plan certainly.

Q. You mean through April, 1937 at least? A. That's right.

3811

Q. What were your duties as the management representative in these labor questions? A. To hear their problems, discuss them with them and go into matters with the rest of the management committee.

Q. And was your committee the final management

S. M. 1525

committee or was there one above yours? A. No, we were the final management committee.

Q. And you continued in that work under the new contracts which have been executed throughout the system with the I.B.E.W.? A. Well, there has been very little time since then, I have been on vacation, I can't say that I have been at all active.

3812

Q. But are you the person who is in charge of such questions as may arise under the newly executed contracts? A. Well, I don't know that I would say that, the executive vice president in Queens is probably the man to decide that. We have had no matters come up so far. I certainly would be in on a discussion of it.

Q. And who is the vice president, the executive vice president? A. Mr. Colman.

3813

Mr. Ransom: Lawrence A. Coleman.

Q. (By Mr. Moscovitz) And your position, however, is the same, isn't it, as it was before the contracts were executed in that you would handle important labor questions as they arise? A. Probably.

Q. During the period of time that you were on the management committee, did you know of the existence of the Independent Brotherhood of Utility Employees? A. I knew of them in a general way, yes.

Q. Did you know too when the Brotherhood became members of the International Brotherhood of Electrical

3814 *Harold C. Dean—For Respondents—Cross*

S. M. 1526

Workers? A. Well, not exactly. I know there were changes in the status of their organization from time to time, I heard that, I can't tell you anything more.

Q. Do you know that Mr. Wersing was an active member of the Brotherhood of Utility Employees? A. I did later on, I certainly did.

Q. And when you say "later on", you mean when? A. Well, from December, 1935, we will say.

3815 Q. Before or after his discharge? A. After his discharge.

Q. You certainly knew it then? A. Yes, I did.

Q. Were you advised of it also before his discharge? A. I knew in a general way that he was active in it, some organization.

Q. Sir? A. Some organization.

Q. Yes, and you knew the same about Mr. Grulich? A. That's true.

Q. Mr. Emler? A. Well, I am a little doubtful about Emler, I probably did.

Q. Mr. Kennedy? A. Yes, I knew about Mr. Kennedy.

3816 Q. And is there a question in your mind about Mr. Wagner? A. Yes, I don't know about Mr. Wagner, I

S. M. 1527

did not know about him until after he had been laid off.

Q. Did Mr. Solosy come within your jurisdiction? A. No.

Q. Was the R. A. and I. Detective Agency one which was employed in your organization? A. They did some work for us.

Q. And was that at the time the organization of the Brotherhood of Utility Employees? A. No, not specifically, I don't think that is the question to put to me for

that purpose, they were employed of general purposes, for checking up on theft or loss of material in the yards, and other reasons.

Q. How long a period have the R. A. and I. been employed by your company? A. I don't remember.

Q. Were they employed for any period outside of 1935 and 1936? A. Well, I don't remember with certainty.

Q. Do you have any recollection at all of their having been employed before 1935? A. Well, it would be only a hazy recollection. 3818

Q. Well, do you have any? A. Yes, I think I do recollect that they worked for us on occasion before 1935.

Q. But you do have recollection of their being em-

ployed in 1935, is that right? A. Well, I am hazy as to the date, yes I think in 1935.

Q. 1936? A. No, I am not sure about 1936.

Q. All right, and outside of the reasons for employment that you have already given, were there others? A. No. 3819

Q. Do you recall whether or not the agents of the R. A. and I. during 1935 made reports to management on the activity of any of the employees? A. Only in cases where we suspected them of either stealing material or attempting sabotage or something in some case like that.

Q. Were the reports rendered on their organizational activities in addition? A. I don't recollect that they were.

Q. Would you say that they weren't? A. Yes, I would say that. Their whole report was to indicate where the company was in dangering of losing its property or having its service interrupted.

3820 Q. In that regard they would then investigate the organizational activities of certain employees. Is that right? A. I don't know. No, I would not say that, not their organizational activity.

Q. Well, activities which might result in the interruption of service personally, is that right? A. Yes.

S. M. 1529

Q. Sir? A. That is true, yes.

3821 Q. And would they not also investigate such circulars as may have been distributed during that period of time to determine the source? A. Not that I know of.

Q. All right. A. I don't see why they would.

Q. Now, Mr. Dean, has Mr. Wersing, during that period of time and before his discharge or lay-off brought your attention to the fact that he was an officer of the Independent Brotherhood of Utility Employees? A. He represented them. I don't know whether you would call him an officer or not, I recollect that Mr. Wersing and Mr. Grulich came up to see me once regarding an employee whom he had laid off.

3822 Q. Then, do you recall when it was in relation to the time of their layoff or discharge? A. I think it was prior to that.

Q. Shortly prior? A. I don't recollect that.

Q. All right, and was that the first time that you knew this organization was in your company? A. Oh, no. I had a general knowledge that there was activity

S. M. 1530

there handing out handbills at the door.

Q. And was it called to your attention that Mr. Emler was active too, as a representative? A. Well, I don't recollect.

3823

Q. Were there any other labor organizations organizing in your company at that time? A. Organizing?

Q. To your knowledge? A. Organizing or attempting to organize?

Q. Attempting to organize? A. Well, I don't know whether they were or not, of course, we had our employee representation plan working so that practically everybody was in that and there was very little interest in any other organization.

Q. Now, in 1935, before the discharge of Mr. Wersing and Mr. Emler or rather Mr. Grulich, you were at 3824
what peak in employment? A. Well, are you talking about some particular department?

Q. No, in your entire system, or rather in your entire company? A. I don't know, I haven't got the records in that case, I just have got the records in the case of the inventory department which was one of my departments I was especially interested in.

Q. I see. And could you give us an approximate figure on the number of employees working for the

S. M. 1531

company at the time these gentlemen were discharged 3825
or laid off? A. Yes, there were over 4,000, say 4,300.

Q. And of that number how many did you say were employed in this department where Mr. Grulich and Mr. Wersing were? A. Well, I could not give you any figures as to those in the total department, I had them in several sections of some of the divisions of the bureaus that they were working in, I don't know about departments.

Q. Well, I mean in a department where these two gentlemen were working? A. I don't know.

Q. Can you give me an approximation?

Judge Ransom: You mean the whole department?

3826 *Harold C. Dean—For Respondents—Cross*

Mr. Moscovitz: Yes.

The Witness: Possibly three hundred or four hundred.

Q. (By Mr. Moscovitz) 300? A. Yes, that is general.

Q. And does that department then break down into divisions? A. Into bureaus.

Q. Into bureaus? A. Yes.

Q. And these two men find themselves in one of the bureaus? A. The three men were in one of the bureaus.

3827

S. M. 1532

Q. Who was the third? A. Wagner, Wersing and Grulich.

Q. How many did you say were employed in that bureau? A. I can't say, I don't have that figure either.

Q. Well, what figure can you give me in approximation? A. Well, in the pricing and posting section including the clerks in charge, there were 13.

Judge Ransom: A section is a sub-division of a bureau.

3828 The Witness: A section is a sub-division of a division which is a sub-division of a bureau.

Q. (By Mr. Moscovitz) Yes. A. And in the analysis and report section of a different division again there were seven including the clerk in charge. Now, these were sections, different sections and different divisions of the one bureau.

Q. What bureau? A. It was the work order bureau.

Q. Work order bureau? A. Yes.

Q. And these three men were employed in the work order bureau? A. Yes.

Q. And how many men in the bureau? A. I don't know.

Q. Can you give me an approximation? A. Probably a hundred.

S. M. 1533

Q. Sir? A. A hundred, we will say.

Q. 100? A. Yes.

Q. And it was out of that figure of 100 that these three men came when they were either laid off or discharged? A. That is true.

Q. Now, you refer to Mr. Grulich before as a second rate clerk, he was a first grade clerk. A. Wersing was 3830
a second grade, Mr. Grulich was a first grade.

Q. First grade? A. That's right.

Q. Now, none of these three men had been laid off or discharged before, had they? A. Not that I know of.

Q. And the record of their employment is one which is already in evidence, is that right? A. That record shows the time they were employed and what they were rated at, their increase in pay and all that.

Q. Yes. A. Yes.

Q. And it gives the rating as to whether they were good, fair or average employees, or poor employees? A. I don't know, we did not have a rating working at 3831
that time, later on we did when the other two men were laid off.

Q. So that you had no rating system in existence at the time these three men were laid off? A. Not a cur-

S. M. 1534

rent rating by the bureau. When they left, they were, their bureau head gave his opinion of them. Of course, it was purely his opinion.

Q. Purely his opinion? A. Yes.

Q. Based on his observation of their work, is that right? A. Yes.

3832 *Harold C. Dean—For Respondents—Cross*

Q. But there was no record of employment and rating outside of hours and income? A. That is all.

Judge Ransom: There were no such rating cards as there was in the overhead bureau later?

The Witness: No, there are now, but there were not at that time.

Q. (By Mr. Moscovitz) Now, how many men out of a hundred had greater seniority than these three men? A. Well, I don't know.

3833 Q. Is the hundred figure—strike that out, please. How many had less seniority than the three men? A. Well, I don't know, I think the figures that I gave for the inventory department are very typical, those men were recruited from all departments of the company and you will note there that a large proportion came in the year 1929.

Q. These three men, these three men too, came in 1929, did you say? A. Three, I think Wersing, Grulich

and Wagner. I think all three came in '29.

3834 Q. All three came in '29? A. Yes, sir.

Q. And what was the figure in the department in 1929? A. Inventory department?

Q. Yes. A. Well, 42 men who were laid off directly and 135 who were transferred back, there were 13 out of 42 in the first case who were employed in 1929 and 31 out of 135 who were employed in that particular year.

Q. Now, in 1929 how many men did you have in the department itself, not the bureau? A. The inventory department?

Q. Yes. A. None.

Q. None? A. No.

3835

Q. And when did it reach its peak figure? A. July of 1935.

Q. And that figure was what? A. 222.

Q. And what did you say the figure is today? A. Well, I did not say what it was today, we reduced it, and there has been a reorganization of the entire system, we reduced it to 45, after that.

S. M. 1536

Q. When did you reach the figure of 45? A. I don't know whether I have that or not. Sometime in 1936. 3836

Q. Do you recall what time in 1936? A. The middle of 1936.

Q. Do you recall who the first men were that were let go in that bureau? A. No, I don't.

Q. Were there men laid off or discharged before Mr. Wersing, Mr. Grulich and Mr. Emler in that bureau? A. Yes, in the inventory department you mean?

Q. I mean in the bureau. A. I don't know about the bureau. I suppose there were but I don't know.

Q. Well, do your records that you have been looking at from time to time disclose whether or not there have been others laid off or discharged before these three 3837 men? A. From that bureau?

Q. Yes. A. No, my records of discharges are only for the inventory department.

Q. I see. A. And with 135 people, they were scattered throughout the company, besides the 42 who were laid off directly from that department.

S. M. 1537

Q. Now, can you tell us if this question refreshes your recollection; whether or not there were others laid off or discharged in this particular bureau before these three men about whom we have been talking? A. No, I don't know that.

3838 *Harold C. Dean—For Respondents—Cross*

Q. You don't know that? A. No, I don't keep any of those figures in my mind.

Q. Do you know what the figure was in the bureau at the time these three men were laid off? A. No, I don't.

Q. You don't? A. I would say about 100 but I don't know whether that is right or not.

Q. Yes, now, what is the figure today? It was 100 then, what is it today? A. I don't know what it is.

Q. Now, you say these three men were laid off or
3839 discharged because you had to cut the force? A. Yes.

Q. You were going to make room for married men? A. There was a surplus of employees in the inventory department in the case of these three men, if you are talking about Messrs. Wersing, Grulich and Wagner.

Q. That is right. A. Yes.

S. M. 1538

Q. What did you say? A. A surplus of employees in the inventory department occasioned the layoff entirely of, well, the reduction of 222 down to 45.

Q. So you were going to move the married surplus
3840 men into this bureau and move the single men in the bureau out? A. We did in this particular case. Now, marriage wasn't the sole consideration. Just because a man was married did not mean that he was kept, he had to be a good man in addition.

Q. I see, so if he was a married man and not such a good worker he might not stay? A. That's true.

Q. And if he was a single man and a better worker he would stay? A. That might be so, yes.

Q. And were there women in the bureau at that time? A. Well, I presume there were, I don't know.

Q. Composing, making up, this 100 figure? A. I don't know, I suppose so, but I don't know.

3841

Q. Well, are you familiar with the operations of the bureau with the type of personnel? A. Well, there were clerks and certainly women clerks, I know there was at least one because I have her name here, Blanche Strauss.

S. M. 1539

Q. Were there others? A. Probably.

Q. And did they do the same work as the men did? A. Well, I suppose generally, a woman can do a first grade clerk's job.

3842

Q. The same kind of work? A. Yes.

Q. There is no distinction on the basis of sex? A. No, we tried not to make any distinction there.

Q. What standard did you develop for the continuation in employ of married women at the time you were letting single men go in that bureau? A. We did not discriminate against married women.

Q. Or single women? A. No.

Q. So that your plan was only for the removal of single men without consideration to the question of whether or not you had single or married women left in the bureau? A. No, not necessarily, there were single women laid off, I know that directly from the inventory. 3843
I happen to know that because a number of them came in to see me after they had been laid off.

Q. Were they in the same bureau as Mr. Grulich? A. No, the inventory department had been laid off directly. I am not familiar with any women who had been laid off from stores bureau.

S. M. 1540

Q. So you are not familiar with the women laid off in the bureau? A. No.

Q. You don't know of any women in the bureau having been laid off? A. No, I have only the records in the

3844 *Harold C. Dean—For Respondents—Cross*

particular department. In this particular case. I am also familiar with the overhead situation.

Q. But despite the fact that you have records of the inventory department, the place where these three men were employed was in the overhead bureau? A. The work order bureau, you mean.

Q. The work order bureau? A. Yes.

Q. All right. Now, you can't give us any testimony on the seniority of these men in relation to that of other men in the bureau? A. Well, except that I know what
3845 Mr. Wagner said in his testimony.

Q. Yes. A. That there were three other people who had less seniority than he.

Q. Yes. A. Well, it is true, very slightly less seniority, slightly different work, that is true. They came a

S. M. 1541

few months after he did.

Q. The other men you don't know? A. The other men?

Q. Yes. The other two men you have no basis of determination for? A. I know they came in 1929.

3846 Q. But you have no basis for determining seniority or length of service in its entirety? A. No.

Q. To other persons? A. But despite that, I said that seniority counts for something when other things are equal.

Q. Yes, what are these other things that you took into consideration in the layoff or discharge of these three men? A. Their efficiency and their family responsibilities.

Q. Yes. Now, you have already testified too that the family responsibility was not the only consideration? A. That's true.

Q. So, we really come down to the main one in so far

as I could make out of competency and efficiency in determining whether or not they should remain? A. That is not the only consideration, but that is certainly a prime consideration.

S. M. 1542

Q. A prime consideration? A. Yes.

Q. Then you have testified that you have no record or basis of determining their efficiency except as a report might have been given to you at the time of their consideration for layoff or discharge by their superiors? 3848
A. That's true. I talked to their superiors, their bureau heads, department heads.

Q. Yes. Did the superior with whom you talked point out to you that all of the men whom you were considering for layoff or discharge at that time were officers of the local of the Independent Brotherhood of Utility Employees? A. No.

Q. Well, you knew that Mr. Wersing was active, that Mr. Grulich was active and that Mr. Emler was active, rather we can leave Mr. Emler out— A. I knew Mr. Grulich and Mr. Wersing were active.

Q. You knew they were officers? A. I didn't know 3849
what their particular jobs were. I knew they were active. Mr. Wagner was laid off at the same time. I believe they testified he was treasurer.

Q. Then had they been given notice before their date of discharge or layoff that they were going to be let go? A. I think not.

Q. Did you consider them for employment elsewhere?

S. M. 1543

A. No, for the reason that I knew I had a couple of hundred other men to let go.

Q. Was this the first time you had ever had to let a number of men go? A. No.

3850 *Harold C. Dean—For Respondents—Cross*

Q. What had the policy of the company been in similar situations? A. A similar policy.

Q. A similar policy? A. Yes.

Q. You always considered efficiency? A. Yes.

Q. Marriage? A. Yes.

Q. Is that right? A. Yes.

Q. When, before this, had you laid off a number of men? A. Well, the record shows—take the case of the linemen—there has been a gradual reduction there from 1932. I have those figures, down to the present time.

3851 Q. When before had you ever laid off men in the work order bureau? A. I don't know about the work order bureau.

Q. Sir? A. I don't know about the work order bureau. I just know we took people from that bureau or

the department of which that bureau was one, to make up the inventory department. We had the problem of reducing the force of the inventory bureau, including—see, we had taken at the time thirty-two employees from the auditor's department to make up the work order

3852 bureau.

Q. Did you go over the records with the personnel department on transfers from the— A. I did.

Q. Department? A. I did. I took it up with the department and the department heads.

Q. When did you start going over these records? A. Well, in July, 1935, in the case of the inventory department.

Q. Yes. A. A gradual reduction from then on.

Q. A gradual reduction from July? A. Yes.

Q. When you say inventory department, do you also include the work order men? A. No, the inventory department was separate and distinct. The work order bureau was not in the inventory department.

Q. I see. When did you start going over the question of what men were to be laid off in the work order bureau? A. Well, probably at the time they were laid

S. M. 1545

off, in that particular case.

Q. That was when? A. I believe it was in November, 1935, yes.

Q. And with whom did you go over their cases? A. With the personnel director.

3854

Q. Who was the personnel director? A. Mr. Waterhouse.

Q. Yes. A. And with the head of the inventory department.

Q. Who was that? A. Mr. Planteroff.

Q. Yes. A. The head of the auditor's department.

Q. Can you recall when it was? A. Well, within the preceding week or ten days, I suppose.

Q. Yes. Now, why did you take this question up with those men at that time? A. The men in the inventory department had come from the auditor's department. We had to cut off good men. In fact much better than average men.

3855

Q. Did you have to make room— A. We had to lay them off or find some other place to place them. They were part of that 135 men that I testified we transferred to other bureaus.

S. M. 1546

Q. Then you were compelled to find room for 135 men? A. Yes, and they happened to be six of that group.

Q. And you finally got to that point in this bureau in November of 1936? A. That's right.

Q. 1935, rather? A. That's true.

Q. How many men did you have to place at the time

3856 *Harold C. Dean—For Respondents—Cross*

you were faced with the question of removing these men from this bureau? A. Well, that particular day we will say six.

Q. Is that the figure at the time? A. Yes, there were six laid off that particular day that I know of.

Q. From the department? A. From the inventory department. I know that.

Q. And can you recall who they were? A. No, I cannot.

Q. Do you recall whether or not they were all put in
3857 this bureau? A. They were.

Q. Yes. And were they then given the jobs of the six men who were removed from the bureau? A. That's right. Either directly or indirectly. There were transfers made around. When I say bureau, possibly one of

S. M. 1547

them were in some other bureau of the same department, but they were in the same department.

Q. Who were the six men who were removed from the Bureau? A. I don't recollect who they were, except these three who I happen to be booking up.

3858 Q. Do you know whether or not the other three who were removed from the bureau have since been reinstated in the bureau? A. No, I am sure they have not.

Q. Do you know whether or not they have found employment elsewhere in your company? A. In the company?

Q. Yes. A. No, I am sure they have not.

Q. No? A. It was a problem to take care of the other 135 men I had coming.

Q. Mr. Waterhouse, when he was discussing with you the removal of these men from this bureau, was active in the affairs of the Employee Representation Association, wasn't he? A. He was on the management committee with me.

Q. Yes. And you were all very well satisfied with the way in which that plan was worked, were you not? A. Yes.

Q. You have testified that that satisfaction was the reason for no interest by employees in these other or-

S. M. 1548

ganizations? A. Yes.

Q. And do you know whether or not Mr. Waterhouse knew that these employees who were removed from the work order bureau were officers of the Independent Brotherhood of Utility Employees, who had just recently organized? A. I don't know whether he knew any more about it than I did or not. I doubt it. 3860

Q. So you two gentlemen, chairman and member respectively, of the management committee, passed on the question of the removal of these men? A. Among others, yes.

Q. Who were the others? A. Well, the head of the inventory department for one.

Q. Was he also a member of the management committee? A. No.

Q. All right. A. The head of the auditor's department. 3861

Q. Was he a member of the management committee? A. No.

Q. How about the head of the work order bureau? A. No, I did not discuss it with the head of the work order bureau.

Q. Who was he? A. Mr. Mehrtens.

S. M. 1549

Q. Now, Mehrtens was the man who should logically make recommendation to you regarding persons work-

3862 ing under him? Isn't that so? A. Well, why not Mr. Hausenbauer? They worked under him too, or Mr. Brown who was over Mr. Hausenbauer.

Q. Well, now, I don't know. A. I wouldn't say Mr. Mehrtens because he didn't employ them directly, you see they were three or four lines or organization down below Mr. Mehrtens.

Q. Well, now, who was the man then in the work order bureau who recommended to you that these men should be let go? A. Mr. Hausenbauer.

3863 Q. Did he sit with you and the personnel director in consideration of the men that should be left out? A. Yes.

Q. What was his position? A. He is auditor.

Q. And is he also a member of the management committee? A. No.

Q. All right. Now, as auditor, is he immediately in charge of the work order bureau? A. Oh, no, he has several bureaus.

Q. Who is in immediate charge of the work order bureau? A. Mr. Mehrtens.

Q. And Mr. Mehrtens' immediate superior is who?

3864 S. M. 1550

A. Mr. Hausenbauer.

Q. Yes. And Mr. Mehrtens was not consulted in regard to the records of these men? A. He undoubtedly was, not by me.

Q. Not by you? A. No.

Q. Did you discuss with Mr. Hausenbauer the question of whether or not Mr. Mehrtens had been consulted in that regard? A. I did not discuss that particularly. He has to find out his own information. I didn't ask him how he finds it.

Q. I see. A. I am sure he did.

3865

Q. You think he did? A. Oh, I am sure he did. I know how he works.

Q. Yes. Well, you don't know that he did? I mean, I just want to know if you know. A. No, I don't know.

Q. Yes. Mr. Kennedy and Mr. Emler were the remaining officers of this local of the Brotherhood of Utility Employees. Did you know that? A. No. Was Mr. Emler an officer of it?

Q. Perhaps you are right. I should say, if I recall his testimony, as you evidently do, that he was an active member? A. Well, I don't know. I don't think he 3866

S. M. 1551

was very active myself, but possibly he was.

Q. Well, Mr. Kennedy, we will agree was. Is that right? A. Yes.

Q. And he was president of the National Association? A. Well, I don't know that. There were so many different changes in the organization. If you pin it down to some particular time, I don't know what he was.

Q. Well, at the time he was discharged or laid off, he was an officer of the Brotherhood of Utility Em- 3867
ployees. Is that right? A. I don't know whether he was or not.

Q. You knew he was active in that organization? A. I knew he had been.

Q. Or you knew he had been active in it? A. Yes.

Q. All right. And you say he was employed in the overhead bureau? A. That's right.

Q. How many men did you say were employed in that bureau? A. At that particular time?

Q. Yes. A. 336.

Q. And Mr. Emler was also in the bureau at that time? A. That's right.

3868 *Harold C. Dean—For Respondents—Cross*

Q. And did you have to get rid of these men too be-

S. M. 1552

cause of the surplus employee problem? A. Yes, it was a different problem but there was still a question of surplus men for the work to be done.

Q. Yes. And when was it brought to your attention that you would have to get rid of certain of the overhead bureau men? A. It had been a continuous problem.

3869 Q. Since when? A. Well, I know since 1932.

Q. Yes. And how many men had been let out from the overhead bureau from 1932 until these two people were discharged? A. 66.

Q. Yes. And how many men have been let out since? A. Up to the end of last year, that is the last figure I have, seven more I think.

Q. Seven more? A. I think so.

Q. Yes. In other words, seven more since their discharge? A. That's right.

Q. Does that include them? A. No, let's see—I don't know, maybe it does.

3870 Q. Yes. A. I am not sure on that.

Q. All right, and what was the status for your letting these men go? A. You mean how do we pick them.

S. M. 1553

Q. How did you pick them? A. The supervisor selected them to apply for these jobs in the New York Edison Company, thought they ought to be able to fill the jobs.

Q. Who was the supervisor? A. Well, the supervisor was Mr. Werner.

Q. Was Mr. Werner a member of the management committee? A. No.

Q. Was Mr. Werner the man who reported to you on this question? A. No.

Q. Who did? A. Well, Mr.— the personnel director did a great deal of this work, you see.

Q. The same Mr. Waterhouse? A. Mr. Waterhouse was in very close touch with all the departments and bureau heads. Of course, I don't know that Mr. Waterhouse didn't also speak to Mr. Mehrtens. You spoke of Mr. Mehrtens a while ago. He was close to all the bureau heads.

Q. That was his job, really? A. That is his job, yes. 3872

Q. Do you recall whether or not other men were chosen with Mr. Kennedy and Mr. Emler to be let out at that time? A. Yes.

S. M. 1554

Q. Who were they? A. On that particular day, for instance, there was another man.

Q. Who was he, do you remember? A. I have forgotten his name.

Q. Has he since been re-employed? A. No.

Q. You are sure of that? A. Yes, I recollect, I don't know what his name was, but I know he went to 3873 either Sweden or Norway shortly after that.

Q. What did he do, resign or leave? A. He was laid off, the same as the others.

Q. Do you know how long he had worked for your company? A. I know he had worked a longer time than either Kennedy or Emler.

Q. Yes. How many other men that day? A. Those are the only ones.

Q. Do you know what seniority both those men had with relation to the balance of the men in the bureau? A. Yes, I have already testified to that. I have it here. Would you like to have it again?

3874 *Harold C. Dean—For Respondents—Cross*

Q. Yes. A. There were 64 men who were employed prior to Mr. Kennedy's last employment; 64 first grade linemen. I mean they were first grade linemen at the

S. M. 1555

time of his layoff, and there were twelve who had been employed more recently than he, or more recently than Mr. Emler. I think I can say that I have that reversed. I think Mr. Emler has the longer seniority than he has. Mr. Kennedy has the lesser.

3875 Q. So there were some remaining men with less seniority? A. Oh, yes, there were twelve.

Q. Twelve, but then there were some in between? A. There were six in between Mr. Emler and Mr. Kennedy.

Q. Well, how did you decide on the basis of the records that you had before you at that time which men should remain of those who had less seniority? A. Considering their work, the quality of their work.

Q. Their records, considering their records? A. Their records.

Q. It wasn't like the other bureau where you had no records? Is that right? A. No, we had established

3876 record rating cards in the intervening period, rating cards of all employees.

Q. When had the rating card system been introduced in relation to the time of their discharge? A. Well, I don't remember.

Q. Not very long before, was it? A. Well, it could not have been more than say seven months before.

Q. Seven months before? A. Yes.

S. M. 1556

Q. And who was in charge of the rating? A. The supervisor or assistant supervisor is the one who made the rating.

Q. Didn't the foreman put down on this card his rating of the man' work? A. Not the foreman.

Q. The supervisor? A. Of course the foreman was undoubtedly consulted.

Q. Yes. And if the foreman or the supervisor decided— A. It was the assistant supervisor in this case, you see.

Q. If the assistant supervisor decided that a man was good or bad, or fair or poor, that would be the record? A. Yes sir. Of course in some cases the record speaks for itself, they have a rating as to their attendance. 3878

Q. Yes, now that brings up the question of Mr. Kennedy's prolonged absence in the period preceding his layoff or discharge? A. That's right, yes, he was away certain times during the preceding twelve months.

Q. Do you know what the reasons were for Mr. Kennedy's absence from work? A. As far as I know overhead line work was too severe for him.

Q. Isn't it true that the doctors of the company in-

structed Mr. Kennedy to stay at home during those periods? A. Well, he came in and was sick, of course 3879 they would tell him to go home.

Q. Well, I mean, I don't know, I am just asking you for information. A. Well, you don't think that a doctor looks these men up and says, "Now, you look sick, go home."

Q. Well, I don't know. A. If a man comes into the office and says, "Doc, I am sick—"

Q. You may have awfully good doctors—in any event, he does not stay home for any holiday. He was home because he was sick in those periods, isn't that so? A. I assume so.

Q. He was home sick because he got sick working for

your company, isn't that so? A. Well, that is not always the case. I don't know that.

Q. That was the diagnosis of the doctors of your company, isn't it? A. Well, not necessarily, you don't always get sick working for the company.

Q. Well, doing the job that he was supposed to do for the company? A. He might have been out too late the night before and caught cold.

Q. Well, was that the diagnosis? A. I don't know.

3881 S. M. 1558

Q. Well, didn't you advise yourself at the time you let Mr. Kennedy go whether or not he had been absent because of service to the company under trying circumstances or because he had been out late the night before? A. No, I did not.

Q. All right. So that when Mr. Kennedy testified as he did that he became ill because of work that he had done for the company you do not contradict it, do you? A. No, sir, I just report that he was away 22 per cent of the time for one year and 16 per cent of the time the previous year.

3882 Q. But it is not the practice of your company— A. And you would not consider him one of the mo desirable linemen if you had to have him with a record like that, would you, if you had to get that work done?

Q. Well, it is not the practice of the company simply to discharge a man because he happens to have gotten sick in pursuant to his duties? A. No, but the assistant supervisor certainly has to take into consideration a record of attendance, a person away 22 per cent of the time, you can't run the company that way.

Q. Regardless of the reason for his having been absent? A. That is true.

Trial Examiner Gates: We will take a five-minute recess.

S. M. 1559

(Whereupon a short recess was taken.)

After Recess

Q. (By Mr. Moscovitz) And six weeks of that time was spent in the company hospital, I think? A. The Green Mountain Lakes Farm.

Q. The Green Mountain Lakes Farm? A. Yes, he was up there twice, I believe. 3884

Judge Ransom: It is a sanitarium.

Q. (By Mr. Moscovitz) A sanitarium? A. Yes.

Q. At the request of the company doctor because of sickness contracted while at work? A. Well, I just—I should say at the request of the company doctor.

Q. Well, as I understand the record, that was the fact? A. These employees don't get sick to please a doctor.

Q. No, I don't say they got sick to please a doctor. A. They don't go up there to please the doctor either. 3885

Q. I say he went up there at the request of the doctor? A. I would not say that. The doctor said he was a fit patient for it.

Q. Well, he got sick and then the doctor recognizing his illness advised him to go to this sanitarium? A. Perhaps he did, I don't know whether he advised him or whether he asked for permission to go.

S. M. 1560

Q. Well, you don't know how he happened to get up there? A. No.

3886 *Harold C. Dean—For Respondents—Cross*

Q. All right now, Mr. Grulich has made an application for transfer to another job? A. Either in 1934 or 1935.

Q. Either in 1934 or '35, Mr. Hausenbauer had marked his service record under his jurisdiction as excellent? Were you advised of that record which was in your personnel files? A. No, I did not know that record existed, it has been introduced here. I haven't seen it if it has.

3887 Judge Ransom: It was shown in Mr. Grulich's statement.

Q. (By Mr. Moscovitz) This is my statement on the basis of information given to me by Mr. Grulich? A. Oh, that's different, I don't know about that.

Q. All right, you did not see any of the records in the personnel files on this question? A. No.

Q. Did you? A. Well, no, Mr. Waterhouse undoubtedly had access to everything in the personnel files, if there had been anything like that he would have told me about it, certainly.

Q. Did you know that on the date that Mr. Kennedy was let go that a Mr. James Stein was also called up as
3888 to the fourth person of the day to be laid off or discharged? A. No, I don't recollect it.

S. M. 1561

Q. Yes, and that Mr. James Stein was after interviewed by the person doing the laying off or the discharging, was sent back to his job, that Mr. James Stein was the only one of the four who is not a member of this Brotherhood of Utility Employees? A. No, I don't know, was the third one a member of the Brotherhood, I did not know that.

Q. Well, there was a Mr. Kennedy? A. Yes.

Q. Mr. Emler? A. Yes.

Q. Mr. Backe? A. Was Backe a member of the Brotherhood? Was that the name of it at that time, the Brotherhood?

Q. The Brotherhood of Utility Employees? A. What was that?

Q. That was the name of it. A. I didn't know it.

Trial Examiner: The testimony here is that he was not a member of the Brotherhood, as I recall it.

3890

Mr. Moscovitz: Well, the record will speak for itself.

The Witness: I did not know he was a member.

Mr. Moscovitz: I don't have a recollection of it.

Q. (By Mr. Moscovitz) All right then you don't have a recollection of James Stein? A. No. I don't.

S. M. 1562

Q. Now seven persons who were discharged since Mr. Kennedy's discharge, Mr. Emler's discharge, the figure may or may not include Mr. Kennedy, were they discharged immediately after Mr. Kennedy and Mr. Emler? A. Well, as a matter of fact that is the net, isn't it, the net reduction, there have been transfers around, some men were transferred as I recollect it back from the inventory department to the line department to save their being laid off in the inventory department and others were laid off in the line department.

3891

Q. Well, were any of those seven men transferred to other departments, rather than being laid off? A. I don't know that.

Q. You don't know? A. No.

3892 *Harold C. Dean—For Respondents—Cross*

Q. But when you say that seven men were laid off or discharged since Mr. Emler and Mr. Kennedy it may be that they were transferred to other departments rather than being laid off? A. Well, there was a net reduction of seven. Now, of course you know what work a lineman can do, he can't very well be transferred to other departments in the Queens Company without affecting his employment there.

Q. Yes. Were these two men sent to be considered for wiring work? A. Wire men, yes, that is inside con-

3893

S. M. 1563

struction.

Q. And was that by consent of the company to whom they were sent? A. Yes, they advised us that they needed some men.

Q. And that they needed men for that purpose? A. That is right.

Q. When were you advised of that? A. Oh, just—

Q. Before? A. Just the day before they went, I suppose, or shortly before.

Q. You considered these two men capable for that

3894 work? A. We thought so, yes.

Q. And you were advised by the company to whom they were sent that they were not qualified, is that right? A. Well, they said that the men replied that they did not have any experience in that kind of work and could not do that kind of work.

Q. And they were sent back? A. So they came back.

Q. So they went back and were laid off, is that right? A. That's right.

Q. Did you send any men after that to do this wiring

S. M. 1564

work from this same bureau? A. I am not sure whether

3895

we did or not. I know on previous occasions we had sent men from the departments, on a short time after that we had a spurt of work in connection with electric drain installations and we put back people from the Edison Company temporarily that we had previously sent over since then. Other people have been sent over to the Edison Company. I don't know the exact answer to that.

Q. Well, in your consideration of the records of the other three men of which Mr. Wagner was one, you took into consideration special circumstances, didn't you, of the particular employees? A. Well, now, you mean the other three men who were laid off at that time?

3896

Q. Yes, I mean Mr. Wagner and Mr. Grulich and Mr. Wersing? A. Yes.

Q. Now, you testified that the prime consideration was whether or not they were efficient, is that right? A. That's right.

Q. Mr. Wagner, you testified, was above average in his record? A. That's right.

Q. Is that right? A. Yes.

Q. And you say that marriage wasn't a prime consideration, is that right? A. No, it was not the overwhelming consideration.

3897

S. M. 1565

Q. Now, do you know that Mr. Wagner, who was above average in his work was also the sole support of his mother? A. No, the record don't show that. When you get down to records you know everybody can prove that he is supporting a large part of the unemployed so if he is married and has children, that is the record.

Q. You don't inquire as to what the load of the particular employee is? A. No, as soon as you start to inquire, the employee will have plenty of dependents.

Q. And the fact— A. If he hasn't he will get them right away.

Q. And the fact that Mr. Wagner had this support was no determination— A. I don't even know now, maybe his mother has been supporting him throughout this period of unemployment.

Q. So that the thing that you would be concerned with and that was really important was whether or not the man was married, even though he might have been married to Doris Duke? A. I think if we knew he was
3899 married to Doris Duke we would not have considered that.

Q. But your record would have shown that? A. I think it would, no special place on the card except under remarks.

S. M. 1566

Q. Has there been a layoff of men in the overhead bureau in the last few weeks? A. Well, perhaps there has. I don't know. My duties have been changed somewhat since the first of the year.

Q. Would your figure of seven include any of the
3900 men that might have been laid off? A. No, that was the figure up to the end of 1936. Now, that figure of seven, as I say, is a net figure. I saw the personnel records and the gross number of reductions is greater than that, but the overhead bureau had to take back some people from other departments.

Q. Weren't these two men, Mr. Emler and Mr. Kennedy, taken away from the job that they were working on? A. Oh, I heard them testify to that.

Q. At the time they were laid off? A. Well, as I recollect from their testimony, they were installing an underground service in a house on the outskirts of Flushing and they took them away. Well, that job takes a

matter of hours, or a day or so, you know, the object of taking them away from that being to let somebody else do the job so they wouldn't be laid off. So it isn't any particular job that a man is on. They are always taken off at five o'clock. I think you are trying to show that they were taken off—

Q. No, I will tell you what I am trying to show. I

S. M. 1567

am trying to show that there was plenty of work to be done by these men and by the bureau. A. That would n't 3902 show that.

Q. It wouldn't? A. The fact that there is plenty of work to be done this day or tomorrow or the next day doesn't mean there is plenty of work.

Q. It doesn't? Now how many men had been laid off within the three months period preceding Mr. Emler's and Mr. Kennedy's layoff? A. The three months period?

Q. Yes. A. I don't know.

Q. Were there any? A. Undoubtedly there were.

Q. Do you recall when the last man was laid off, discharged, in relation to— A. No, I did see a record and 3903 there was continuous decrease in employment from 1932 on.

Q. Well, does your production record show whether or not there was a decrease in work for these men or an increase in work, during that same period? A. No, it has been exceedingly difficult all through this depression to find enough work to keep the men busy.

Judge Ransom: Now, in the overhead bureau you mean?

S. M. 1568

The Witness: Yes, in the overhead bureau.

3904 Q. (By Mr. Moscovitz) We are just discussing the overhead bureau? A. Yes.

Q. Are you still engaged in the reduction of forces? A. Yes.

Q. In the overhead bureau? A. In the overhead bureau, yes.

Q. What figures can you give me which would show that you are still engaged in a reduction of forces in the overhead bureau? A. I don't have any figures. Subsequent to—

3905 Q. 1936? A. 1936, for the first four or five months of this year.

Q. Yes. A. I do know people have been laid off.

Q. Do you know in what bureaus? A. No, but in the distribution department.

Q. In the overhead bureau? A. Undoubtedly so.

Q. Well, do you know? A. No, I don't know, but I do know there have been a gross number of men laid off from the distribution department. I have seen that figure.

Q. Did you gentlemen take into consideration when

S. M. 1569

3906 you let Mr. Kennedy and Mr. Emler go the fact that they were both qualified to do overhead work and other ground work? A. We took into consideration the experience that they had had with the company. They should have been able to do wiring work, not the most skilled switchboard wiring, but wiring work.

Q. That was in consideration for a job in a different company? A. That's right, that is what I thought you meant.

Q. No. Your best qualified men or your most useful men in the overhead bureau are men who can do both overhead and underground work, isn't that right? A.

Well, not necessarily. Of course, we have a great many men that can do that, because that is what we have been compelled to have them do for several years past now. Practically all the line gangs do overhead and underground work.

Q. The men that were in the overhead bureau at the time of the discharge of Mr. Emler and Mr. Kennedy were not all qualified to do overhead and underground work, were they? A. I would say practically all of them were who were first grade linemen. Some of the work they had to do was much less skilled than they were 3908 paid for. A first grade lineman gets pretty good money and the man that digs a trench to put a duct in does not get so much money. Now, Mr. Kennedy has dug trenches because there wasn't anything else to do. Now, they don't brag about their ability to dig trenches. It

S. M. 1570

is just a case of making work for them. Cable splicing is another thing we have to be trying to break the linemen into, cable splicing, but so far I don't think Mr. Kennedy has done anything but some low tension splicing. 3909

Q. Was it taken into consideration when they were let out that they were able to do underground work as well as overhead bureau work? A. That was true of the whole bureau.

Q. Your figure is that they were all able to do that. A. A first class lineman was able to do the underground work, should have been able to do the underground work that they did on occasions.

Q. Well, it is true, isn't it, that as a rule the overhead men were not qualified to do both overhead and underground work, isn't it? A. Prior to 1932, most of them were not, but subsequent to that I wouldn't say they were not qualified.

3910 *Harold C. Dean—For Respondents—Cross*

Q. Haven't had experience in that? A. Haven't had experience, but they got the experience very shortly.

Q. But Mr. Kennedy and Mr. Emler were men qualified and experienced in both kinds of work; weren't they? A. Yes, but we would have preferred to have men do that kind of work who were more experienced in the underground department, and if we had not

S. M. 1571

been short of line work, we would never had had them
3911 do that kind of work.

Q. Did you have men who were experienced in that kind of work? A. Oh, yes.

Q. Were they men who had less seniority than these men? A. I don't know. For instance, in the cable splicing bureau—

Q. Yes. A. There were probably some who had less seniority than they but who were more skilled.

Q. That is a surmise on your part? A. Well, I know from the record.

Q. What record are you referring to? A. Well, the record of employment, that we have cable splicers who
3912 had been employed about the same time Mr. Kennedy was, perhaps a little later, good cable splicers.

Q. Do you know too that you had men left in your employ at the time these men were let out, who had more experience in both kinds of work than they had had? A. Oh, yes, men who were infinitely superior.

Q. Did you have men who had less experience? A. I don't believe so.

Q. And less seniority? A. Well, everything considered, considering— Possibly less seniority. There were, as I testified, a few people who had less seniority than they, not very many.

S. M. 1572

Q. What is the basis for your saying that these few also had more experience? A. Which few?

Q. The few with less seniority? A. I don't think I said that.

Q. Well, then, do you say that the few who had less seniority also had less experience in this work than Mr. Emler and Mr. Kennedy? A. Not necessarily, you may have been with the company two years and had less experience, but you might be a much better working man from point of view of production and quality of your work. 3914

Q. That's true as a general principle, but your determination of that skill at this point, as you sit on the stand, is not based on any records that you have seen. A. But you are asking about experience. I think you are conflicting that with seniority.

Q. No. I want to know if you know whether or not there were less in the employ of the company, men with less experience in this work than Mr. Emler and Mr. Kennedy? A. Well, I don't know what you mean by experience. You don't mean seniority?

Q. I don't mean seniority? When I talk of seniority, I mean length of service. A. Well, what is the basis for knowing what experience is then? 3915

S. M. 1573

Q. I am just asking you. A. I don't understand your question.

Q. All right, I can imagine where a man would work for a very short period of time for a company and have more experience in a kind of type of work than another man, despite the fact they work in the same bureau. I am asking you whether or not there are men in this bureau who were left employed by the company

who had less experience in their work than Mr. Kennedy and Mr. Emler? A. You mean by experience in their work, in this underground work?

Q. The underground work, yes. A. That would be possible because one man might have been so exceptionally good on overhead work that they wouldn't waste his time putting him in on underground work, but a man that wasn't so good they might have digging trenches.

3917 S. M. 1573-A

Q. But if he was good at his overhead work and good at his underground work, he would be considered an awfully good man, wouldn't he? A. If he was especially good at overhead work he might not have a chance to do underground work of certain characters.

Q. Do you use first grade linemen generally to do underground work? A. Not generally, only through such periods as we have been through.

Q. So most first grade linemen who are overhead men have done underground work; haven't they? A. At the present time in the Queens Company?

3918 Q. Yes. A. Probably so.

Q. That's all.

Examination by the Trial Examiner:

Q. (By Trial Examiner Gates) I have two or three questions. You gave the figure 135 being laid off from the inventory bureau. A. Inventory department.

Q. Shifted into other departments? A. That's right.

Q. Does that mean that an equal number were shifted out and onto the streets from the departments,

S. M. 1574

or did they just fill jobs? A. No, they were shifted out.

3919

Q. So there was a net reduction of 135? A. Possibly a few of those might have been shifted to some other company, but there was a net reduction of 135.

Q. As I understand it, these jobs over here in Manhattan with Consolidated Edison were open before the New York & Queens selected Mr. Kennedy and Mr. Emler to go over and apply for them. Is that correct? A. Yes.

Judge Ransom: One other man also went.

The Witness: Mr. Bakke also went.

3920

Mr. Berton: Mr. Stein.

Trial Examiner Gates: I am referring only to those involved in this proceeding.

Q. (By Trial Examiner Gates) As I understand, my recollection of each part of the testimony, as to the interview on the Consolidated Edison, it was a question of taking a considerable reduction in pay. Do you know anything about that? A. Well, it would depend upon their qualifications, how they would fit into the jobs. I would say not necessarily. I would say that the pay these men were getting was around $43, and would be in line for a wireman's job. We thought that they ought to get the same pay.

3921

Q. If they weren't offered a wire man's job, but

where offered a lesser job at less pay? A. Well, I think the answer is that they did a very poor job of selling themselves, that they acted as though they didn't want the job. In fact, I think that is true, that they preferred to have the two weeks' pay for each year of employment. It looked pretty good at that time. I think the testimony shows that they debated upon whether they would go over at all or not.

3922 *Harold C. Dean—For Respondents—Redirect—Recross*

REDIRECT EXAMINATION:

Q. (By Judge Ransom) If they were qualified as wire men, they would be within the same range of pay substantially— A. Wiremen get as good pay as linemen.

Q. If they didn't qualify as wire men but had to go in as wire men's helpers, the pay would be less? A. Yes.

Q. (By Trial Examiner Gates) Would their seniority transfer? A. Yes.

3923 *RECROSS EXAMINATION:*

Q. Would it be a same rank job? A. Oh, yes.

Q. First grade lineman or wireman? A. Yes, and also you wouldn't be exposed to the elements and you might not be sick as much of the time.

Q. Did you take that into consideration when you sent them over? A. I don't know, maybe the supervisor

did.

Q. You don't know, though, as a matter of fact,
3924 whether they were offered jobs as wiremen when you went over, do you? A. I think they did not get that job. I think right away they killed it with, "We are not wiremen."

Q. So there was never any question of that job being offered to them? A. I think that is the story.

Q. (By Judge Ransom) That is the substance of the report you received back? A. Yes, the supervisor of the New York Edison reported back and said, "They aren't wiremen, they couldn't do the work," and they didn't interview them.

(Witness excused.)

Judge Ransom: If the Examiner please, you will recall that at the period before the recess, the question came up of the taking of testimony on behalf of the respondents. The suggestion was made, very courteously, I think, by your Honor, that I might place the matter before the National Labor Relations Board so that they would have the full picture before them.

I did that by letter dated June 28th, and I have a reply from the secretary of the Board under date of July 2nd. I take it that your 3926
Honor is familiar with the nature of that reply.

S. M. 1577

At this stage I will offer in evidence the letter of June 28th to the National Labor Relations Board and the reply of the Board dated July 2nd.

Trial Examiner Gates: There being no objection, they are admitted.

(Documents referred to received in evidence and marked Respondent's Exhibits 25 and 25-A, respectively.) 3927

Judge Ransom: I would like to call to the stand Mr. Selah S. Tompkins.

Trial Examiner Gates: In view of the ruling of the Board, I am afraid that—

Judge Ransom: May I be heard briefly on that?

Trial Examiner Gates: You may be heard and you may make an offer of introduction of witnesses.

Judge Ransom: I want to call your Honor's attention to this:

3928

Proceedings

When we were discussing this matter here on June 24th, we were dealing with the problem presented by the absence of Mr. Carlisle in Europe and Mr. Dean in Milwaukee. I said I should not have much of any testimony aside from their testimony. They were the witnesses whose presence was altogether essential in behalf of the respondents. Anything else would be short and witnesses few. There was no suggestion at that time on the part of your Honor, or on the part of counsel for the Board, or on the part of counsel for

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S. M. 1578

the respondents, that any intermediate date be set for the taking of any such incidental testimony. There was no such date set. To my mind no opportunity was presented.

We adjourned late on the 24th until today, and the decision was reserved. Now, I submit that the respondents would not have their fair opportunity for hearing before this Board if the testimony here in behalf of the respondents were restricted to that which has already been given. I should think also that the Board would wish to have the facts of this matter.

3930

We have listened here to the testimony in behalf of the government since the 3rd of June, with a few intervals. You have listened to the testimony in behalf of the respondents for one day.

Now, I ask your Honor, in the interests of justice and a fair trial, for a presentation to this Board of facts which they ought to have if they wish to make a determination upon facts, that the testimony of two witnesses who will not be long be also taken. The first of those is Mr. Tompkins.

I do not think that I ought to be left to merely an offer of proof. I am not concerned about this case which presents really important issues, to have some technicality about whether the respondents were denied a fair and full hearing, or were arbitrarily excused from the presentation of their case. We want to give you the facts, and we ask

S. M. 1579

that that opportunity be afforded.

Trial Examiner Gates: Well, I am sure I want 3932
the facts and I am sure the Board wants the facts, just to keep the record straight, as to an adjournment on June 24th I believe you will agree that I also mentioned that we might carry over to the following day for the production of any witnesses that you cared to have at that time.

Judge Ransom: I think that your Honor is, of course, correct, that was one of several suggestions that was made and I think your Honor will likewise bear me out, I think I am right in saying, I certainly got the impression, that there was no particular desire on the part of either counsel on 3933
either side or perhaps for your Honor to have a hearing at some intermediate date for just one or two short witnesses. There was a sort of a feeling, at least I got the impression, if it was going over at all, that it had better go over and leave the intervening time for other activities of counsel for the Board and counsel for the respondents.

Now, I think we ought to be allowed to put in proofs, I venture even to say that I would think that if the Board realized the full aspect here of what is going on here, that they should and would feel the same way about the circumstances, neces-

sarily sitting in Washington with a multiplicity of things brought to them from all over the coun-

S. M. 1580

try, they don't know the atmosphere of a trial such as this and I believe that both sides have tried in this case to bring out the facts in a fair way as they saw them, and I don't believe there has been a waste of time here and I submit it is simple justice and fair play.

3935 I call your attention also to the fact that over my objection this morning, your Honor allowed the Board, the government, to amend its complaint to conform to proof. Now, I assert an absolute right under those circumstances to present proof and meet such changes and such issues and facts as your Honor allowed.

Trial Examiner Gates: I am afraid I consider myself bound by the decision of the board in respect to eliciting testimony.

Judge Ransom: Won't your Honor do this, just quietly take this testimony and if the Board 3936 does not want to consider it, why, about all that anybody is out of pocket is paying for the minutes and they won't be long and we won't take up much of your Honor's time, and I think the Board would rather have the testimony than not have it, because somebody, I say with all due deference, I think somebody will be sending the case back to take this testimony and I would rather take it this week than during the Christmas holidays. I might call your Honor's attention to this: The testimony which I am now immediately asking an

opportunity to offer relates to the circumstances of the discharge of an employee whose name is not in the charge, was not in the complaint of which notice of hearing was served, is in this case at all only by amendment.

Now, I submit that under those circumstances there might be some propriety in letting us meet the issue which we did not come here to try but which we have found ourselves under the necessity of trying by reason of an amendment granted after this case was well underway. 3938

Trial Examiner Gates: You are now referring to Solosy?

Judge Ransom: Solosy.

Trial Examiner Gates: Off the record.

(Discussion outside the record.)

Judge Ransom: On behalf of each of the respondents, I respectfully except to the limitation of the testimony in behalf of respondents contained in the Board's letter to respondent counsel under date of July 2nd, on the ground 3939 that this limitation, if enforced at all, amounts to a denial of fair hearing, amounts to a denial of due process, withholds from the respondent an opportunity of meeting the issues to which the complaint as amended recently during the trial relates, including the meeting of the issues to which the complaint as amended today relates and that we regret and respectfully except to such a limitation.

3940

Proceedings

S. M. 1582

Now, in behalf of respondents, I offer to call and offer to show by the assistant chief chemist of the Consolidated Edison Company of New York of the discharge of the one-time employee, Solosy, and likewise the discharge of Ewing had no relation to activities or non-activities or membership on the part of either of them in any labor organization. I offer to show that their work in the chemical control department relates solely to

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the calibration and operation and testing of instruments and testing of quality of gas in testing stations established by public authority of the state of New York, namely, the Public Service Commission and are entirely local and regulatory in character and in no way relate to any process of manufacture and in no way relate to any process of the distribution of gas within the localities in which it is served.

I further offer to show by the testimony of these witnesses that during recent years a considerable number of the gas plants formerly

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operated by companies of this group in the Borough of Manhattan and in the Borough of Queens and in the Borough of the Bronx have been wholly discontinued and withdrawn from service; that that has taken place along with a steady reduction in the volume of gas sold and used by the public in the City of New York and that, with that, has gone necessarily a reduction steadily in

S.M. 1583

the force of employees in this chemical department.

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The number has gone down steadily from 67 employees in '33, it is down to 52; that the work of Mr. Solosy in his department was no more than average; that the number of the Thomas recording calorimeters to which his work related was being decreased and was decreased and about a third of the number in operation at that time were gone from service; that so far as any other men in the bureau whose tenure of employment was shorter than Solosy's and were not laid off at that time, that they were men of highly trained 3944
technical education in chemistry, graduate chemical engineers, whereas Solosy was not anything like their equal in technical, chemical education.

So far as Mr. Ewing is involved in this case, I offer to show that Mr. Ewing's work was the testing of quality of gas in these local regulatory testing stations established by the city of New York; that in the matter of conformance with these regulations, that these duties were performed by these testers alone, who went to these testing stations in residential and other highly congested areas of population and spent long 3945
periods of time there alone and that without any desire to say anything unduly unkind, that Mr. Ewing was simply not a proper person to be kept in that position, and in any event with the reduction in force it was logical and right that he be

S. M. 1584

removed from that relationship.

I offer to show those facts and develop the full details from the appropriate records of the company. I except to your Honor's refusal or failure to allow me to call Mr. Tompkins and Dr.

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Lunn to prove those facts by oral and documentary testimony.

I also except the curtailment of respondent's case in all other respects with the limitation to the testimony of Mr. Dean and Mr. Carlisle. Under those circumstances, I have no alternative but to bring respondent's case to a regretful but forcible conclusion.

Trial Examiner Gates: Is there anything further?

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Mr. Moscovitz: No.

Judge Ransom: I should like an opportunity to submit a brief.

Trial Examiner Gates: Do you wish to submit a brief? It may be submitted to me in care of the Board in Washington within ten days.

Judge Ransom: That will be very agreeable.

Trial Examiner Gates: The hearing is adjourned.

(Whereupon, at 4:25 o'clock p. m., July 6, 1937, the hearing closed.)

3948

Board's Exhibit No. 1

3949

CHARGE FILED WITH THE BOARD BY THE UNITED ELECTRICAL AND RADIO WORKERS AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, DATED MAY 5, 1937.

[Printed at page 4, as a part of the pleadings]

COMPLAINT AND NOTICE OF HEARING ISSUED BY THE BOARD, BY ITS REGIONAL DIRECTOR FOR THE SECOND REGION, DATED MAY 12, 1937 (WITH THE SUBSEQUENT AMENDMENTS INDICATED).

3950

[Printed at page 7, as a part of the pleadings]

ACKNOWLEDGMENTS AND PROOFS OF SERVICE OF THE COMPLAINT AND NOTICE OF HEARING.

[Printed at page 17]

NOTICE OF MOTION BY RESPONDENT COMPANIES, WITH AFFIDAVIT, DATED MAY 17, 1937, FOR PRIOR AND SEPARATE HEARING AS TO JURISDICTION AND TO DISMISS COMPLAINT AND CHARGE FOR WANT OF JURISDICTION.

3951

[Printed at page 19]

AMENDED NOTICE OF HEARING DATED MAY 25, 1937, ISSUED BY THE BOARD.

[Printed at page 34]

AFFIDAVIT OF SERVICE OF AMENDED NOTICE OF HEARING.

[Printed at page 35]

[The remainder of Board's Exhibit No. 1 is not printed, but may be referred to in the Transcript of Record filed.]

3952

Board's Exhibit No. 2

STIPULATION OF FACTS FOR THE DETERMINATION OF THE QUESTION OF JURISDICTION.

United States of America
Before the
National Labor Relations Board
Second Region

3953

CASE NO. II-C 224

IN THE MATTER
of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies
BROOKLYN EDISON COMPANY, INC.,
NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY,
WESTCHESTER LIGHTING COMPANY,
THE YONKERS ELECTRIC LIGHT AND POWER COMPANY,
NEW YORK STEAM CORPORATION,
CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY,
Respondents,

3954

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.

STIPULATION FOR THE DETERMINATION OF QUESTION OF JURISDICTION

DAVID A. MOSCOVITZ,
Regional Attorney,
Second Region,
National Labor Relations Board,
No. 45 Broadway,
New York City.

WHITMAN, RANSOM, COULSON & GOETZ,
Attorneys for Respondents,
Appearing specially and only for the purposes stated in the Notice of Motion dated May 17, 1937,
No. 40 Wall Street,
New York City.

June 2, 1937.

Board's Exhibit No. 2

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3958

Board's Exhibit No. 2

United States of America
Before the
National Labor Relations Board
Second Region

In the Matter of Consolidated Edison Company of New York, Inc., and its affiliated Companies Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, *Respondents,*	Case No. II-C 224
and United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization.	

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For the purposes of the above-entitled proceeding, the following facts are hereby stipulated and agreed, and may be offered in evidence, by or in behalf of the National Labor Relations Board or by and in behalf of the respondents, with the same force and effect as if properly qualified witnesses were called before the

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Board and gave under oath sufficient and competent evidence of each of the matters and things herein set out, wholly without prejudice to the right of any party hereto to object to the materiality or relevancy of any such facts; and likewise without any prejudice or disadvantage to the special appearance made by the respondents jointly and severally for the sole purpose of moving to dismiss the complaint and the proceedings upon the grounds of want of jurisdiction more specifically set out in the respondents' notice of motion filed May 17, 1937, and likewise without prejudice to the right of the National Labor Relations Board or the respondents to offer oral testimony or other evidence as to any matter pertinent to the issues in this proceeding.

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Upon the basis, and for the limited purposes, above stated, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties, as follows:

I. TERRITORY AND CORPORATE ORGANIZATION OF THE RESPONDENTS

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1. The respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company, are public utility corporations, organized and existing under special or general laws of the State of New York, and are engaged in the business of supplying electric service to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and part of the Borough of Queens, within the City of New York. The respondent Consolidated Edison Company of New York, Inc., is engaged also in the business of supplying gas service to consumers situated in the Boroughs of Manhattan, The Bronx, and part of the Borough of Queens (Long Island City and the Third Ward—Flushing, etc.),

3964 *Board's Exhibit No. 2*

within the City of New York. The respondent Consolidated Edison Company of New York, Inc., conducts the electric business formerly conducted by The New York Edison Company, Inc. (including that of the latter's predecessors, The New York Edison Company and The United Electric Light and Power Company) and by the Bronx Gas and Electric Company, merged into the Consolidated Edison Company of New York, Inc., in 1936; also the gas business formerly conducted by it under the name of the Consolidated Gas Company of New York
3965 and that formerly conducted by various gas Companies in the Boroughs of Manhattan and The Bronx and part of the Borough of Queens, merged into the Consolidated Edison Company of New York, Inc., in 1936. Whenever in this stipulation facts or figures are given as to the Consolidated Edison Company of New York, Inc., the same include, unless otherwise indicated, the pertinent facts and figures as to such predecessor Companies within the period stated to be covered.

2. None of the respondents supplies any kind of service in the Borough of Richmond or in the Fifth Ward of the Borough of Queens (the Rockaway region);
3966 and none of the respondents supplies gas service in the Borough of Brooklyn or in any part of the Borough of Queens except Long Island City and the Third Ward (Flushing, etc.).

3. The respondent New York Steam Corporation supplies steam service to consumers situated within a part of the Borough of Manhattan.

4. The respondent Consolidated Telegraph and Electrical Subway Company does not supply electric, gas or steam service to any consumers, but constructs, maintains and operates, under contracts with the City of New York, underground ducts or conduits for electrical conductors, within the Boroughs of Manhattan and The Bronx, New York City.

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5. The respondent Westchester Lighting Company supplies electric service to consumers situated in the major part (all except the City of Yonkers and the Towns of Somers, North Salem, Lewisboro and Poundridge) of the County of Westchester, State of New York; and the respondent Westchester Lighting Company supplies also gas service to consumers situated in such major part of the County of Westchester as receives gas service. The respondent Westchester Lighting Company also supplies electric service to consumers situated within a small area in the Borough of The Bronx, in the City of New York, adjacent to Westchester County and formerly a part of that County. The respondent The Yonkers Electric Light and Power Company supplies electric service to consumers situated in the City of Yonkers, Westchester County.

3968 6

Maps of territory

6. Maps showing the territory supplied with electric, gas and steam service, by any of the respondents, together with the location of their principal electric generating stations, substations, gas manufacturing plants, steam generating plants, and various other properties, are hereto annexed and made a part hereof, marked Exhibits Nos. 1 and 2, respectively.

3969 7

Corporate organization and local franchises

7. Each of the respondents (except the Consolidated Telegraph and Electrical Subway Company) is a corporation organized and existing under general or special laws of the State of New York for the purpose, and is subject to the public duty, of supplying electric, gas or steam service to consumers situated within their respective franchise territories as above stated. In addition to the general corporate powers of the respondents,

3970 *Board's Exhibit No. 2*

they possess, and conduct their operations by virtue of, various local franchises to lay, maintain and operate mains, pipes, wires or other conductors for conducting gas, electricity or steam, in, on, over, under and through the streets, avenues and other public places within the City of New York and in various cities, villages and towns in Westchester County, subject to the terms of such franchises and to such reasonable regulations as the local municipal authorities may prescribe. These franchises were granted in some instances by
3971 special legislative Acts of the State of New York, and in other instances by consents of the local municipal authorities in the State of New York.

8. Excepting the respondent Consolidated Telegraph and Electrical Subway Company, each of the respondents is "a public utility company" as defined in Section 2, subdivision 22, of the Public Service Law of the State of New York, and is subject to the jurisdiction and regulatory powers of the Public Service Commission of the State of New York as to its operations, properties, rates, revenues, expenditures, accounts and other respects provided by law. The public obligation of
3972 such respondents is to render adequate and continuous service, at rates limited by such regulation, to consumers situated in their respective territories in the City of New York and Westchester County. The respondent Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York. Although affiliated with the Consolidated Edison Company of New York, Inc., through the latter's ownership of its stock, it is not a public utility, within the meaning of the Public Service Law of the State of New York, and does not produce or supply electricity, gas or steam, or sell any product to anybody. Under a contract dated April 7, 1887, modifying a prior contract dated July 22, 1886, with

the Commissioners of Electrical Subways for the City of New York, ratified and confirmed by and subject to express legislative enactment (Chapter 716, Laws 1887), as modified by a contract dated May 15, 1891, authorized by Chapter 231, Laws 1891, the Consolidated Telegraph and Electrical Subway Company provides, constructs, equips, maintains and operates subways, ducts, and conduits for the reception of electrical conductors (other than telegraph and telephone conductors) in the Boroughs of Manhattan and The Bronx, City of New York, within which its operations are wholly conducted. The Consolidated Edison Company of New York, Inc., and the Westchester Lighting Company, occupy space in such ducts and pay rent for the space so occupied.

Principal and branch offices of respondents

9. The principal office of the Consolidated Edison Company of New York, Inc., is at No. 4 Irving Place, Borough of Manhattan, New York City. Branch offices are maintained and operated by the Company at the following locations:

157 Hester Street, New York City, New York.
129 East 14th Street, New York City, New York.
212 West 57th Street, New York City, New York.
236 West 72nd Street, New York City, New York.
120 East 86th Street, New York City, New York.
151 East 86th Street, New York City, New York.
32 West 125th Street, New York City, New York.
21 Audubon Avenue, New York City, New York.
529 Courtlandt Avenue, New York City, New York.
3856-58 White Plains Road, New York City, New York.
269 City Island Avenue, New York City, New York.
310 East Kingsbridge Road, New York City, New York.
555 East Tremont Avenue, New York City, New York.

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43 Westchester Square, New York City, New York.
136-21 Roosevelt Avenue, Flushing, New York.
35-20 Broadway, Long Island City, New York.

The principal office of the Brooklyn Edison Company, Inc., is at No. 380 Pearl Street, Borough of Brooklyn, New York City. Branch commercial offices are maintained and operated by the Company at the following locations:

566-568 Nostrand Avenue, Brooklyn, New York.
3977 100-102 Chester Street, Brooklyn, New York.
10 Howard Avenue, Brooklyn, New York.
21-23 Snyder Avenue, Brooklyn, New York.
5119-5123 Fourth Avenue, Brooklyn, New York.
270-272 South 3rd Street, Brooklyn, New York.
527-535 Surf Avenue, Brooklyn, New York.

The principal office of the New York and Queens Electric Light and Power Company is at No. 28-19 Bridge Plaza North, in Long Island City, Borough of Queens, New York City. Branch commercial offices are maintained and operated by the Company at the following locations:

3978 69-19 Fresh Pond Road, Ridgewood, New York.
136-21 Roosevelt Avenue, Flushing, New York.
39-25 Bell Boulevard, Bayside, New York.
145-22 Jamaica Avenue, Jamaica, New York.
219-30 Jamaica Avenue, Queens Village, New York.
111-16 Liberty Avenue, Richmond Hill, New York.
35-20 Broadway, Long Island City, New York.

The principal office of the Westchester Lighting Company and The Yonkers Electric Light and Power Company is at No. 9 South First Avenue, in the City of Mt. Vernon, in Westchester County, in the State of New York. A branch commercial office is maintained by these Companies at No. 45 South Broadway, Yonkers, New York.

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Branch commercial offices are maintained by the Westchester Lighting Company at the following locations in Westchester County:

237-9 Huguenot Street, New Rochelle, New York.
126 North Main Street, Port Chester, New York.
1 North Broadway, White Plains, New York.
15 North Broadway, Tarrytown, New York.
125 Main Street, Ossining, New York.
1020 Main Street, Peekskill, New York.
55 East Main Street, Mt. Kisco, New York.
446 Bedford Road, Pleasantville, New York.
562 Warburton Avenue, Hastings, New York.
269 Halstead Avenue, Harrison, New York.
3996 White Plains Road, New York City, New York.
14 Depot Plaza, Tuckahoe, New York.
9 North Riverside Avenue, Croton-on-Hudson, New York.
268 Mamaroneck Avenue, Mamaroneck, New York.
46 East Parkway, Scarsdale, New York.
6 Main Street, Elmsford, New York.
269 City Island Avenue, New York City, New York.
90 Main Street, Dobbs Ferry, New York.
111-131 Chatsworth Avenue, Larchmont, New York.

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The principal office of the New York Steam Corporation is at No. 130 East 15th Street, Borough of Manhattan, New York City.

The principal office of the Consolidated Telegraph and Electrical Subway Company is at No. 54 Lafayette Street, Borough of Manhattan, New York City.

Electric generating stations.

10. The names and locations of the electric generating stations of the respondent Consolidated Edison Company of New York, Inc., and its affiliated Companies, and their

approximate capacities, as of December 31, 1936, were as follows:

Name and location of plant	Electrical rating of main generating units in kilowatts	Thousands of kilowatt hours (net) generated in 1936
Consolidated Edison Company of New York, Inc.		
Hell Gate—134th Street and the East River, The Bronx	605,000	1,579,798.0
East River—14th Street and East River, Manhattan	280,000	1,186,296.4
Waterside—38th Street to 40th Street and East River, Manhattan	314,200	309,333.8
3983 Sherman Creek—201st Street and Harlem River, Manhattan	151,000	253,812.6
Port Morris—149th Street and East River, The Bronx (operated under lease from New York Central Railroad)	70,000	44,098.6[1] (6 mos.
Total	1,420,200	3,373,339.4
Brooklyn Edison Company, Inc.		
Hudson Avenue—Foot of Hudson Avenue, Brooklyn	770,000	2,263,240.6
Gold Street—Foot of Gold Street, Brooklyn	101,000	189.2
66th Street—66th Street and New York Bay, Brooklyn	65,000	388.8
Total	936,000	2,263,041.0
The Yonkers Electric Light and Power Company		
3984 Glenwood Station—Glenwood Avenue and Hudson River, Yonkers	20,000	10,440.4[1] (6 mos.
Total for group of Companies	2,376,200	5,646,820.8

[1] From beginning of operation by respondent after July 1, 1936.

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Electric substations of respondents

11. The number of electric substations (exclusive of two switching stations) and their capacity, as of December 31, 1936, operated by the respondent Consolidated Edison Company of New York, Inc., and its affiliated Companies, were as follows:

	Electrical rating of transforming or converting apparatus			
	Converting D. C.		Transforming A. C.	
	No.	Kilowatts	No.	Kilovolt Amperes
Consolidated Edison Company of New York, Inc.				
Substations supplying one frequency:				
Completely owned	30	461,200	10	260,900
Equipment owned on leased property	3	43,900	2	9,100
Substations supplying both direct and alternating current:				
Completely owned	8	127,300	..	135,000
Total	41	632,400	12	405,000
Brooklyn Edison Company, Inc.				
Substations supplying one frequency:				
Completely owned	4	22,970	7	290,000
Equipment owned on leased property	2	6,200	..	....
Substations supplying both direct and alternating current:				
Completely owned	1	2,000	..	40,000
Total	7	31,170	7	330,000
New York and Queens Electric Light and Power Company				
Substations supplying one frequency:				
Completely owned	..	....	8	261,000
Total	..	....	8	261,000
The Yonkers Electric Light and Power Company				
Substations supplying one frequency:				
Completely owned	..	....	2	128,000
Total	..	....	2	128,000
Westchester Lighting Company				
Substations supplying one frequency:				
Completely owned	..	....	14	296,250
Equipment owned on leased property	..	....	1	300
Total	..	....	15	296,550

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Locations of sub-stations

Electric substation buildings of the Consolidated Edison Company and its affiliated Companies are at the following locations:

Consolidated Edison Company of New York, Inc.

10-12 Stone Street, New York City, New York.
100 Water Street, New York City, New York.
33-43 Gold Street, New York City, New York.
3989
120-124 Cedar Street, New York City, New York.
49-51 Park Place, New York City, New York.
55 Duane Street, New York City, New York.
8 Elizabeth Street, New York City, New York.
40-42 Thompson Street, New York City, New York.
98 Vandam Street, New York City, New York.
55 Crosby Street, New York City, New York.
152 Clinton Street, New York City, New York.
159-161 Greene Street, New York City, New York.
421-423 East 6th Street, New York City, New York.
32 Horatio Street, New York City, New York.
115-117 East 12th Street, New York City, New York.
3990
27-29 West 16th Street, New York City, New York.
119-121 West 22nd Street, New York City, New York.
45 West 26th Street, New York City, New York.
148 East 26th Street, New York City, New York.
452 West 27th Street, New York City, New York.
19 East 32nd Street, New York City, New York.
308-312 West 36th Street, New York City, New York.
117-119 West 39th Street, New York City, New York.
151 East 39th Street, New York City, New York.
285 Madison Avenue, New York City, New York.
314-316 West 41st Street, New York City, New York.
708 First Avenue, New York City, New York.
32-34 West 48th Street, New York City, New York.
224-26 East 52nd Street, New York City, New York.
118-122 West 53rd Street, New York City, New York.

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441 West 53rd Street, New York City, New York.
155 East 60th Street, New York City, New York.
170 West 64th Street, New York City, New York.
207 East 73rd Street, New York City, New York.
123 East 83rd Street, New York City, New York.
211 West 84th Street, New York City, New York.
215-217 East 94th Street, New York City, New York.
117 East 103rd Street, New York City, New York.
171 West 107th Street, New York City, New York.
128 East 121st Street, New York City, New York.
259 West 123rd Street, New York City, New York. 3992
204 Elizabeth Street, New York City, New York.
354 West 45th Street, New York City, New York.
214 West 66th Street, New York City, New York.
115 West 97th Street, New York City, New York.
1429 Bronx River Avenue, New York City, New York.
Welfare Island, New York City, New York.
Lafayette and Whitlock Avenues, New York City, New York.
West 170th Street and Inwood Avenue, New York City, New York.
188th Street and Park Avenue, New York City, New York.
West 238th Street and Spuyten Duyvil Road, New York City, New York. 3993
St. Peters, Westchester and Tratman Avenues, New York City, New York.
Laconia and Yates Avenues, New York City, New York.

Brooklyn Edison Company, Inc.

358-368 Pearl Street, Brooklyn, New York.
2-16 Rockwell Place, Brooklyn, New York.
83-93 Lorimer Street, Brooklyn, New York.
34-52 Ainslie Street, Brooklyn, New York.
57-59 Washington Avenue, Brooklyn, New York.
87-93 Jay Street, Brooklyn, New York.
2896-2904 West 12th Street, Brooklyn, New York.

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6501-6511 Fifth Avenue, Brooklyn, New York.
745-753 Livonia Avenue, Brooklyn, New York.
10-18 32nd Street, Brooklyn, New York.
18-22 42nd Street, Brooklyn, New York.
2014-2024 Coney Island Avenue, Brooklyn, New York.
35-45 West 9th Street, Brooklyn, New York.
2502-2512 Tilden Avenue, Brooklyn, New York.
55-63 Johnson Street, Brooklyn, New York.

New York and Queens Electric Light and Power Com-
3995 *pany*

34-29 Lawrence Street, Flushing, New York.
137-06 91st Avenue, Jamaica, New York.
57-77 Rust Street, Maspeth, New York.
42-29 Ninth Street, Long Island City, New York.
100-09 Atlantic Avenue, Woodhaven, New York.
204-32 Jamaica Avenue, Hollis, New York.
32-15 58th Street, Woodside, New York.
212-04 Northern Boulevard, Bayside, New York.
131-26 Merrick Boulevard, Springfield, New York.

Westchester Lighting Company

3996 Echo Avenue, New Rochelle, New York.
Washington Street, Mt. Vernon, New York.
New Street, White Plains, New York.
Tarrytown Road, Elmsford, New York.
Cortlandt Street, North Tarrytown, New York.
Maple Avenue, Mt. Kisco, New York.
Waverly Avenue, Mamaroneck, New York.
Dock Street, Hastings, New York.
Saw Mill River Road, Millwood, New York.
Main Street, Town of Eastchester, New York.
Smith Street, Port Chester, New York.
Market Street, Ossining, New York.
Woodside Avenue, Briarcliff, New York.
Central Avenue and William Street, Peekskill, New York.

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3997

Catskill Aqueduct and Croton Lake Tower No. 345, Yorktown, New York.

The Yonkers Electric Light and Power Company

24-40 St. Casimir Avenue, Yonkers, New York.
Marco and Smart Avenues, Yonkers, New York.

Locations of service buildings, etc.

Service buildings, shops, store-rooms, garages, etc., of the Consolidated Edison Company and its affiliated Companies are maintained and operated at the following locations:

3998

Consolidated Edison Company of New York, Inc.

708 First Avenue, New York City, New York.
208-10 Elizabeth Street, New York City, New York.
617-49 East 14th Street, New York City, New York.
4733 Park Avenue, New York City, New York.
92-94 Vandam Street, New York City, New York.
95th to 96th Streets and 1st Avenue, New York City, New York.

3999

289-315 Rider Avenue, New York City, New York.
132nd Street and East River, New York City, New York.
East River at 71st Street, New York City, New York.
65th and 66th Streets and Amsterdam Avenue, New York City, New York.
65th Street—201 West 65th Street, New York City, New York.
200 West 66th Street, New York City, New York.
110th Street and East River, New York City, New York.
1700 West Farms Road, New York City, New York.
1838 Webster Avenue, New York City, New York.
1812 Carter Avenue, New York City, New York.
Soundview and Underhill Avenues, New York City, New York.

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Yates Avenue and Gunhill Road, New York City, New York.
Fowler and Morris Avenues, New York City, New York.
34-54 37th Street, Long Island City, New York.
46 Lawrence Street, Flushing, Long Island, New York.
Harper Street, Flushing, Long Island, New York.
170th Street and 39th Avenue, Flushing, Long Island, New York.
Brush Avenue and Westchester Creek, New York City,
4001 New York.
327-31 Avenue A, New York City, New York.
Courtlandt Avenue, at 148th Street, New York City, New York.
York Avenue and 63rd Street, New York City, New York.
514-16 West 147th Street, New York City, New York.
140th Street, Rider Avenue and Canal Place, New York City, New York.
153rd Street and Cromwell Avenue, New York City, New York.
St. Peter's Avenue, New York City, New York.
4002 1555 Purdy Street, New York City, New York.
St. Raymond's and Odell Avenues, New York City, New York.
111th Street and First Avenue, New York City, New York.

Brooklyn Edison Company, Inc.

358-368 Pearl Street, Brooklyn, New York.
21-23 Hudson Avenue, Brooklyn, New York.
2681-2715 Arthur Kill Road, Rossville, Staten Island, New York.
2116 Rockwell Place, Brooklyn, New York.
55-63 Johnson Street, Brooklyn, New York.
903-931 East Seventh Street (Parkville), Brooklyn, New York.
110-128 Varick Avenue, Brooklyn, New York.

Board's Exhibit No. 2

4003

Dikeman Street and Buttermilk Channel, Red Hook, Brooklyn, New York.
321-359 Third Avenue, Brooklyn, New York.
7-13 Quincy Street, Brooklyn, New York.
26-30 Lexington Avenue, Brooklyn, New York.

New York and Queens Electric Light and Power Company

41-33 28th Street, Long Island City, New York.
81-16 45th Avenue, Elmhurst, Long Island, New York.
80-12—80-40 47th Avenue, Elmhurst, Long Island, New York. 4004
40-22 Lawrence Street, Flushing, Long Island, New York.

Westchester Lighting Company

226 Washington Street, Mt. Vernon, New York.
South Third Avenue and East 7th Street, Mt. Vernon, New York.
Railroad Avenue, Rye, New York.
7-15 Water Street, White Plains, New York.
East Main Street and Hamilton Avenue, Peekskill, New York. 4005
Tompkins Avenue and Vermilyea Street, Pleasantville, New York.
Union Avenue and East First Street, Mt. Vernon, New York.
240-254 Washington Street, Mt. Vernon, New York.
Andrews Lane and Elm Street, North Tarrytown, New York.
Sherman Avenue, Ossining, New York.
1612-1616 East Main Street, Peekskill, New York.
45 Maple Avenue, Mt. Kisco, New York.
Cedar Street, New Rochelle, New York.
320 Washington Street, Mt. Vernon, New York.
38-40 Wheeler Avenue, Pleasantville, New York.

4006 *Board's Exhibit No. 2*

110 East First Street, Mt. Vernon, New York.
Woodworth Avenue, Yonkers, New York.
Echo Avenue, New Rochelle, New York.
Sawmill River Road, Elmsford, New York.
Kisco Avenue, Mt. Kisco, New York.
Woodside Avenue, Briarcliff Manor, New York.
54 Ash Street, Yonkers, New York.
Kensico Avenue, White Plains, New York.

The Yonkers Electric Light and Power Company

4007 10-18 St. Casimir Avenue, Yonkers, New York.
7-9 Central Avenue, Yonkers, New York.

New York Steam Corporation

224-230 Pearl Street, New York City, New York.
232-234 Pearl Street, New York City, New York.
612-622 First Avenue, New York City, New York.
412-418 East 36th Street, New York City, New York.
410-416 East 33rd Street, New York City, New York.
43 Sutton Place, New York City, New York.
14th Street and East River, New York City, New York.
27 Cliff Street, New York City, New York.
4008 39th Street, adjacent to Waterside No. 2, New York City, New York.
26 West 13th Street, New York City, New York.
North side of 59th Street, East of Avenue A, New York City, New York.
South side of pier at foot of East 36th Street, New York City, New York.
North side of pier and adjacent bulkhead at foot of Peck Slip, New York City, New York.

Consolidated Telegraph and Electrical Subway Company

535-551 West 41st Street, New York City, New York.
140th Street and Exterior Street, New York City, New York.
491 Walton Avenue, New York City, New York.

Board's Exhibit No. 2

Gas manufacturing plants

12. The names and locations of the gas manufacturing plants of the Consolidated Edison Company of New York, Inc., and their approximate manufacturing capacities as of December 31, 1936, were as follows:

Name and location of plant	Approximate capacity in cubic feet of gas per day	Manufactured in 1936—Thousands of cubic feet of gas
Hunts Point—Foot of Hunts Point Avenue, The Bronx		
Water gas	30,000,000	10,494,227
Coal gas	30,000,000	11,482,346
Total	60,000,000	21,976,573
Astoria Works—20th Avenue and 21st Street, Long Island City		
Water gas	71,500,000	15,625,535
Coal gas	10,000,000	298,597
Total	81,500,000	15,924,132
O'Connell Plant—First Avenue and 21st Street, Manhattan		
Water gas	38,000,000	1,394,420
Ravenswood Plant—7-18—37th Avenue, Long Island City		
Water gas	36,000,000	.....
Flushing—Myrtle Avenue and Farrington Street, Flushing		
Water gas	6,000,000	.....
Total	221,500,000	39,295,125

The names and locations of the gas manufacturing plants of the Westchester Lighting Company and their approximate capacities as stand-by plants, as of December 31, 1936, were as follows:

Name and location of plant	Approximate capacity in cubic feet of gas per day
Pelham Plant—Boston Post Road and Eastchester Creek, Pelham Manor, New York	15,000
Ossining Plant—Water Street, Ossining, New York	1,210
Total	16,210

4012 *Board's Exhibit No. 2*

Gas holder stations

Gas holder-stations of the Consolidated Edison Company and the Westchester Lighting Company are operated at the following locations:

Consolidated Edison Company of New York, Inc.

735 East 12th Street, New York City, New York.
721 East 15th Street, New York City, New York.
621 West 45th Street, New York City, New York.
4013 221 West 65th Street, New York City, New York.
330 East 111th Street, New York City, New York.
626 West 132nd Street, New York City, New York.
204 Walnut Avenue, New York City, New York.
231 Landing Road, New York City, New York.
501 East 62nd Street, New York City, New York.
2369 Blackrock Avenue, New York City, New York.
244th Street and 86th Road, Bellrose, Long Island, New York.

Westchester Lighting Company

Saw Mill River Road, Yonkers, New York.
4014 Railroad Avenue, Rye, New York.
Tarrytown Road, Greenburgh, New York.
Josephine Street, Tarrytown, New York.
Pemart Avenue, Peekskill, New York.
Hubbel's Cross Road, Mt. Kisco, New York.

Board's Exhibit No. 2 4015

Steam generating plants

13. The steam generating plants of the respondent New York Steam Corporation, with their locations and approximate capacities, as of December 31, 1936, were and are as follows:

Name and location of plant	Approximate capacity in thousands of pounds of steam per hour	Steam generated in 1936—thousands of pounds
Burling Slip Plant—126 John Street, New York City, New York	1,800	3,400,438
Kips Bay Plant—417 East 35th Street, New York City, New York	2,450	9,438,547
60th Street Plant—507 East 59th Street, New York City, New York	400	744,087
59th Street Plant—508 East 59th Street, New York City, New York	195	171,830
Total	4,845	13,754,902

4016

Location of other properties and operations

14. All transmission and distribution facilities and equipment and all other property owned by the respondents and used in their business are located and used by the respondents within the City of New York or the County of Westchester. All meters in use by any of the respondents are located, and are read, on the premises of consumers, situated within the City of New York or the County of Westchester; and the preparation and sending of bills to consumers takes place within the City of New York or the County of Westchester. All metering apparatus and equipment furnished by the respondents are located on premises of customers within the City of New York or the County of Westchester. None of the respondents undertakes, or has any contract or agreement, to supply, deliver or transmit electric energy at any location outside of the State of New York, or to supply or deliver electric energy for resale by customers outside of the State of New York. 4017

4018 *Board's Exhibit No. 2*

II. EMPLOYEES OF THE RESPONDENTS

15. As of April 17, 1937, the number of employees of the respondent Consolidated Edison Company of New York, Inc., and its affiliated operating Companies, was, by Companies:

	Number of Employees		
	Weekly	Monthly	Total
Consolidated Edison Company of New York, Inc.	22,227	1,328	23,555
Brooklyn Edison Company, Inc.	7,855	431	8,286
4019 New York and Queens Electric Light and Power Company	4,092	203	4,295
Westchester Lighting Company	2,701	128	2,829
The Yonkers Electric Light and Power Company	384	34	418
New York Steam Corporation	999	71	1,070
Consolidated Telegraph and Electrical Subway Company	1,618	30	1,648
Total employees	39,876	2,225	42,101

By principal classifications or types of work, the number of employees of the respondent Consolidated Edison Company of New York, Inc., and its affiliated operating Companies, was:

	Number of Employees		
4020 Classification	Weekly	Monthly	Total
Outside field employees	11,020	263	11,283
Electric generating stations, sub-stations and gas plant employees (exclusive of clerical and office employees at stations)	7,470	445	7,915
Clerical and office employees including meter readers and collectors	21,386	1,517	22,903
Total employees	39,876	2,225	42,101

The employees above indicated as at stations of the respondents may be further indicated as follows (exclusive of station construction and shop employees):

	Number of Employees		
	Weekly	Monthly	Total
Electric stations	3,700	268	3,968
Gas plants and holder stations	1,897	60	1,957
Steam stations	408	15	423
Total	6,005	343	6,348

Board's Exhibit No. 2

4021

The clerical and office employees of the respondents (exclusive of building service employees) may be further indicated in the following groups:

	Number of Employees		
	Weekly	Monthly	Total
Meter readers	895	2	897
Collectors	1,132	..	1,132
Commercial relations department employees (excluding meter readers and collectors)	5,884	176	6,060
Sales department employees	1,985	216	2,201
Controller's and auditing department employees	1,261	155	1,416
Other clerical and office employees	8,431	950	9,381
Total	19,588	1,499	21,087

4022

Employees of Consolidated Edison Company

For only the Consolidated Edison Company of New York, Inc., the number of employees, by principal classifications or types of work, was:

	Number of Employees		
Classification	Weekly	Monthly	Total
Outside field employees	4,808	136	4,944
Electric generating stations, substations and gas plant employees (exclusive of clerical and office employees at stations)	5,389	306	5,695
Clerical and office employees including meter readers and collectors	12,030	886	12,916
Total employees	22,227	1,328	23,555

4023

The employees above indicated as at stations of the Consolidated Edison Company may be further indicated as follows (exclusive of station construction and shop employees):

	Number of Employees		
	Weekly	Monthly	Total
Electric stations	2,567	176	2,743
Gas plants and holder stations	1,768	55	1,823
Total	4,335	231	4,566

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The clerical and office employees, etc., of the Consolidated Edison Company (exclusive of building service employees) may be further indicated in the following groups:

	Number of Employees		
	Weekly	Monthly	Total
Meter readers	513	....	513
Collectors	653	....	653
Commercial relations department employees, excluding meter readers and collectors	3,284	88	3,372
Sales department employees	1,058	117	1,175
4025 Controller's and auditing department employees	573	103	676
Other clerical and office employees	4,843	570	5,413
Total	10,924	878	11,802

Annual payrolls of respondents

16. The total annual payrolls of the Companies of the Consolidated Edison Company group of Companies in New York City and Westchester County, for 1935 and 1936, including retirement annuities and separation allowances paid, were as follows:

Company	Year 1935	Year 1936
4026 Consolidated Edison Company of New York, Inc.	$13,696,645.73	$15,759,234.25
The Astoria Light, Heat and Power Company	1,812,556.89	641,555.58[1]
New Amsterdam Gas Company (Including The East River Gas Company of Long Island City)	547,538.51	497,576.23[2]
Central Union Gas Company	371,666.68	380,267.35[2]
Northern Union Gas Company	873,616.01	880,660.61[2]
The Standard Gas Light Company of the City of New York	35,421.72	9,702.78[2]
New York and Queens Gas Company	360,096.76	136,677.23[1]
The New York Edison Company, Inc.	28,244,977.47	28,013,579.89[2]
Brooklyn Edison Company, Inc.	16,207,835.40	16,375,685.03
New York and Queens Electric Light and Power Company	7,906,398.81	7,939,416.87
The Yonkers Electric Light and Power Company	829,745.43	789,909.38
Consolidated Telegraph and Electrical Subway Company	2,650,055.35	2,274,733.50
The Brush Electric Illuminating Company	1,156.24	1,187.93[2]
Bronx Gas and Electric Company	820,630.54	878,444.67[2]
Westchester Lighting Company	5,011,803.03	5,221,244.01
New York Steam Corporation	2,093,928.09	2,092,115.11
Total	$81,464,072.66	$81,891,990.40

[1] Five months ended May 31, 1936; merged into the Consolidated Edison Company of New York, Inc., on June 1, 1936.

[2] Eleven months and 22 days ended December 22, 1936; merged into the Consolidated Edison Company of New York, Inc., on December 23, 1936.

Board's Exhibit No. 2 4027

III. SCOPE OF BUSINESS AND OPERATIONS

Electric consumers

17. The consumers of the *electric* service supplied by the respondent Companies, as of December, 1936, number about 2,324,800, of whom about 2,160,300 are located in New York City and 164,500 are located in Westchester County. Wherever in this stipulation, figures are given as to the number of consumers of the service of any of the respondents, such number of consumers is based upon 4028 the number of bills rendered for such service in the month of December, 1936. By classifications the electric consumers of the respondents in New York City are:

Type of service	Number of consumers	Per cent of consumers
Residential	1,763,318	81.63
General uses, including commercial	366,549	16.97
Religious purposes	3,985	0.18
Wholesale and other uses	23,328	1.08
Flat rate—general consumers	2,821	0.13
Railroads	16	....
Municipal street lighting	6	....
Miscellaneous governmental uses	268	0.01
Total	2,160,291	100.00

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The railroads included in the above table are the New York Central Railroad Company, the New York, New Haven and Hartford Railroad Company, the Hudson and Manhattan Railroad Company (the facts as to electric energy supplied to these three railroads being stated in Paragraph 67M hereof), the Long Island Railroad Company (operating on Long Island and into New York City), and three street surface railways operating within the City of New York.

For "miscellaneous governmental uses," 175 bills were rendered (December, 1936) to the Federal Government, 18 bills to the State of New York, and 75 bills to the City of New York and other agencies of local government.

4030 *Board's Exhibit No. 2*

Electric consumers in Westchester County

By classifications, the *electric* consumers of the respondents in Westchester County, as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
Residential	133,516	81.14
General uses, including commercial	23,173	14.08
Religious purposes	815	0.50
Wholesale and other uses	6,382	3.88
4031 Flat rate—general consumers	53	0.03
Railroads	6	....
Municipal street lighting	160	0.10
Miscellaneous governmental uses	440	0.27
Total	164,545	100.00

The only railroad included in the above table is a street surface railroad operating within Westchester County. For the "miscellaneous governmental uses," 2 bills were rendered (December, 1936) to the Federal Government, 14 bills to the State of New York, 58 bills to the Westchester County Government, and 366 bills to municipalities and other agencies of local government.

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Gas consumers

18. By classifications, the *gas* consumers of the respondent Consolidated Edison Company of New York, Inc., in New York City, as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
General uses, principally residential	1,025,495	99.16
Wholesale service	5,579	0.54
Heating service and other service	3,121	0.30
Prepayment meter sales	30	....
Total	1,034,225	100.00

Board's Exhibit No. 2

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By classifications, the *gas* consumers of the respondent Westchester Lighting Company (in Westchester County), as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
General uses, principally residential	128,575	97.79
Wholesale service	149	0.11
Heating service and other service	2,764	2.10
Prepayment meter sales	2	....
Total	131,490	100.00

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Sources of operating revenues

19. The operating revenues of the Consolidated Edison Company group of Companies, taken as a whole, have been and are derived principally from sales of gas, electricity and steam, as indicated by the following consolidated statement, which shows the revenues from these classes of service for the years 1935 and 1936:

Operating Revenues	Year 1935	Year 1936
From sales of electricity	$176,549,590.29	$180,448,596.19
From sales of gas	42,115,466.14	41,163,261.69
From sales of steam	10,589,765.58	10,761,341.04
From rentals of real property, street lighting equipment, and appliances, and other miscellaneous sources	2,898,055.80	2,451,992.45
Total operating revenues	$232,152,877.81	$234,825,191.37

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Board's Exhibit No. 2

Uses of electric energy sold

20. The following table indicates the sales of electricity by the Consolidated Edison Company of New York, Inc. (including its affiliated Companies merged into it), the revenues derived therefrom, by classes of consumers, and the number of active meters on consumers' premises within the City of New York at the end of each year, for the years 1935 and 1936, inclusive:

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	Year 1935	Per cent of kw. hrs. or revenues	Year 1936	Per cent of kw. hrs. or revenues
Sales of electric energy in kilowatt hours:				
Residential	320,998,665	11.69	368,970,560	12.13
General uses, including commercial	540,091,106	19.67	791,200,010	26.00
Religious purposes	7,493,524	0.27	19,982,751	0.66
Wholesale and other uses	1,363,363,531	49.66	1,178,630,928	38.74
Railroads	208,758,643	7.60	322,665,076	10.61
Municipal street lighting	57,777,328	2.11	58,464,126	1.92
Miscellaneous governmental uses[1]	247,192,520	9.00	302,563,388	9.94
Total sales of electric energy in kilowatt hours	2,745,675,317	100.00	3,042,476,839	100.00
Active electric meters on consumers' premises—all located within the City of New York—at the end of the year (approximate)	985,400		997,000	

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Revenues from sales of electric energy:				
Residential	$20,364,362.10	20.86	$21,614,961.59	21.71
General uses, including commercial	29,473,489.57	30.19	36,378,896.99	36.53
Religious purposes	315,937.09	0.32	512,972.63	0.52
Wholesale and other uses	40,967,948.18	41.96	33,943,998.30	34.09
Flat rate—general consumers	35,078.83	0.04	34,740.32	0.03
Railroads	1,887,496.40	1.94	2,519,509.16	2.53
Municipal street lighting	1,672,006.23	1.71	1,165,855.04	1.17
Miscellaneous governmental uses[2]	2,910,417.18	2.98	3,408,377.96	3.42
Total	$97,626,735.58	100.00	$99,579,311.99	100.00
Less—Electric sales suspense	521,281.68		436,445.46	
Total revenue from sales of electric energy	$97,105,453.90		$99,142,866.53	

NOTE: Overlapping items other than Electric Sales Suspense credited to Surplus in 1936 have not been given effect to in this statement.

[1] Includes electric energy supplied to municipal subway system
1935—164,402,705 kw. hrs.
1936—203,833,822 kw. hrs.

[2] Includes revenue from electric energy supplied to municipal subway system
1935—$1,377,412.32
1936— 1,667,851.16

Board's Exhibit No. 2

4039

Electric energy sold by System

21. The following table shows the corresponding facts for the *electric* operations of the Consolidated Edison Company group of Companies, as a System, in New York City and Westchester County:

	Year 1935	Per cent of kw. hrs. or revenues	Year 1936	Per cent of kw. hrs. or revenues
Sales of electric energy in kilowatt hours:				
Residential	887,529,287	19.12	991,244,166	19.32
General uses, including commercial	890,884,917	19.20	1,182,668,912	23.05
Religious purposes	14,723,415	0.32	31,067,366	0.61
Wholesale and other uses	2,081,309,900	44.85	1,927,188,312	37.56
Railroads	249,464,303	5.37	376,800,766	7.34
Municipal street lighting	138,935,104	2.99	142,812,069	2.78
Other electrical corporations	14,090	....	5,510	....
Miscellaneous governmental uses[1]	378,097,474	8.15	479,189,359	9.34
Total sales of electric energy in kilowatt hours	4,640,958,490	100.00	5,130,976,460	100.00
Active electric meters on consumers' premises—all within the City of New York and Westchester County—at the end of the year (approximate)	2,298,700		2,332,700	
Revenue from sales of electric energy:				
Residential	$55,719,480.25	31.46	$57,358,265.06	31.71
General uses, including commercial	50,593,558.17	28.56	58,294,849.80	32.23
Religious purposes	653,693.02	0.37	874,830.28	0.48
Wholesale and other uses	58,759,951.75	33.17	51,727,965.90	28.60
Flat rate—general consumers	77,358.97	0.04	73,580.02	0.04
Railroads	2,369,759.82	1.34	3,112,902.92	1.72
Municipal street lighting	4,039,526.43	2.28	3,563,609.63	1.97
Other electrical corporations	986.30	....	385.70	....
Miscellaneous governmental uses[2]	4,930,287.66	2.78	5,878,652.34	3.25
Total	$177,144,602.37	100.00	$180,885,041.65	100.00
Less—Electric sales suspense	453,014.33		436,445.46	
Total revenues from sales of electric energy	$176,691,588.04		$180,448,596.19	

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[1] Includes electric energy supplied to municipal subway system
1935—221,283,676 kw. hrs.
1936—290,614,173 kw. hrs.

[2] Includes revenue from electric energy supplied to municipal subway system
1935—$1,838,722.86
1936— 2,353,592.65

4042 *Board's Exhibit No. 2*

Uses of gas sold

22. The following table shows the sales of *gas* by the Consolidated Edison Company of New York, Inc. (including its affiliated Companies merged into it), the revenues received therefrom, by classes of consumers, and the number of active meters on consumers' premises, all within the City of New York, at the end of each year, for the years 1935 and 1936:

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Classes of consumers	Year 1935	Per cent of Mcf. or revenues	Year 1936	Per cent of Mcf. or revenues
Sales of gas (thousands of cubic feet):				
General service	24,444,928.0	74.11	23,923,516.5	72.4
Wholesale service	7,324,945.2	22.21	7,539,937.2	22.8
Heating service and other service	1,211,981.6	3.67	1,543,749.5	4.7
Prepayment meter sales	3,298.7	0.01	498.6	...
Total sales of gas Mcf.	32,985,153.5	100.00	33,007,701.8	100.0
Active gas meters on consumers' premises —all within the City of New York—at the end of the year (approximate)	1,021,500		1,039,600	
Revenues from sales of gas:				
General service	$28,522,098.09	79.51	$27,508,913.50	78.3
Wholesale service	6,478,900.30	18.06	6,663,201.05	18.9
Heating service and other service	868,473.20	2.42	921,230.78	2.6
4044 Prepayment meter sales	3,773.37	0.01	571.74	...
Total gas revenues	$35,873,244.96	100.00	$35,093,917.07	100.0
Deductions and allowances	541.01		114.19	
Net total gas revenues	$35,872,703.95		$35,093,802.88	

Gas sold by System

23. The following table shows the corresponding facts for the gas operations of the group of Companies (i. e., for the Consolidated Edison Company and the Westchester Lighting Company combined), for the years 1935 and 1936:

Classes of consumers	Year 1935	Per cent of Mcf. or revenues	Year 1936	Per cent of Mcf. or revenues
es of gas (thousands of cubic feet):				
General service, principally residential	28,002,912.4	74.34	27,602,667.7	72.61
Wholesale service	7,657,541.7	20.33	7,749,311.2	20.38
Heating service and other service	2,002,678.9	5.32	2,663,582.1	7.01
Prepayment meter sales	3,398.1	0.01	573.3	....
Total sales of gas Mcf.	37,666,531.1	100.00	38,016,134.3	100.00
tive gas meters on consumers' premises—ll within the City of New York or in Westhester County—at the end of the year (approximate)	1,150,300		1,171,400	
venues from sales of gas:				
General service, principally residential	$33,875,837.00	80.44	$32,702,747.27	79.45
Wholesale service	6,798,133.90	16.14	6,844,086.94	16.63
Heating service and other service	1,438,124.35	3.41	1,615,871.65	3.92
Prepayment meter sales	3,911.90	0.01	670.02	....
Total gas revenues	$42,116,007.15	100.00	$41,163,375.88	100.00
Deductions and allowances	541.01		114.19	
Net total gas revenues	$42,115,466.14		$41,163,261.69	

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Per cent of service supplied

24. The Consolidated Edison Company of New York, Inc., supplied in 1936 about 55.3 per cent of the total gas supplied to the public in New York City. All of the Boroughs of Brooklyn and Richmond, and the larger part of the Borough of Queens, are supplied with gas by companies not identified with the Consolidated Edison Company group of Companies.

4048 *Board's Exhibit No. 2*

25. All of the Borough of Richmond and the Fifth Ward of the Borough of Queens are supplied with electricity by companies not identified with the Consolidated Edison Company of New York group. The Companies of the Consolidated Edison Company of New York group supplied in 1936 about 97.5 per cent of the total electric energy sold by central-station companies in New York City. Throughout the territory of the respondent Companies, there are privately-owned electric generating plants, which generate electric energy for the owner's
4049 use or for sale to tenants, etc.; and various concerns maintain emergency generating plants, for operation only in the event of any failure of central-station supply.

26. In Westchester County, the Westchester Lighting Company is the only public utility supplying gas in its territory; and the Westchester Lighting Company and The Yonkers Electric Light and Power Company supply nearly all of the electricity sold by central-station companies. There is a relatively small part of the County which is supplied with electricity by a company not identified with the Consolidated Edison Company of New
4050 York group.

Steam operations in Manhattan

27. The New York Steam Corporation is the only central-station steam utility operating in the City of New York. It supplies steam in a part of the Borough of Manhattan, as shown on the accompanying map. There is a large number of privately owned and operating steam plants within the Borough of Manhattan as well as in other parts of the City of New York and Westchester County.

28. The New York Steam Corporation derives substantially its entire revenues from the sale of steam,

within the part of the Borough of Manhattan which it serves, in New York City. Steam is supplied for heating and processing, in commercial, industrial and residential uses, in loft and office buildings, some industrial establishments, multiple-family dwellings, and for the operation of steam compressors, including those for elevator operation in the passenger station of the Pennsylvania Railroad Company. The following table shows the volume of sales of steam and the revenues derived therefrom, and the number of active meters on consumers' premises, at the end of each year, for the years 1935 and 1936: 4052

Year	Sales of steam (M. lbs.)	Revenue	Active meters on consumers' premises in New York City at the end of year
1935	11,247,118	$10,589,765.58	3,066
1936	11,443,465	10,761,341.04	3,050

IV. MANAGEMENT AND MANNER OF CARRYING ON OPERATIONS

29. The respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, and the New York Steam Corporation, are commonly referred to as the Consolidated Edison Company group of Companies or the Consolidated Edison Company System. The respondents (other than the Consolidated Telegraph and Electrical Subway Company) constitute, and are operated as, a unitary and integrated system for the supplying of electric, gas and steam service to consumers within the parts of the City of New York and the County of Westchester, State of New York, indicated in Paragraph 1 of this stipulation. The nature, manner and extent of such 4053

integrated operation are more fully set out in subsequent paragraphs of this stipulation.

Stock ownership

30. The respondent Consolidated Edison Company of New York, Inc., owns approximately 99.6 per cent of the common stock (voting) of the respondent Brooklyn Edison Company, Inc. The respondent Consolidated Edison Company of New York, Inc., owns approximately 98.4 per cent of the common stock (voting) and approximately 92.7 per cent of the preferred stock (voting) of the respondent New York and Queens Electric Light and Power Company. The respondent Consolidated Edison Company of New York, Inc., owns all of the outstanding common stock (voting) of the respondents Westchester Lighting Company and The Yonkers Electric Light and Power Company. The respondent Consolidated Edison Company of New York, Inc., owns approximately 96.3 per cent of the outstanding common stock (voting) of the respondent New York Steam Corporation. The respondent Consolidated Edison Company of New York, Inc., owns all of the outstanding common stock and all of the preferred stock (voting) of the respondent Consolidated Telegraph and Electrical Subway Company.

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System management

31. A majority of the Board of Directors of each of the respondent Companies other than the Consolidated Edison Company of New York, Inc., is made up of Trustees or officers of the respondent Consolidated Edison Company of New York, Inc. Each of the respondent Companies has executive and operating officers and employees who are not officers of the respondent Consolidated Edison Company of New York, Inc., but who take part, with the Trustees and officers of the latter, in the discussion and

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determination of the major and general policies of the group of Companies. The major labor policies, among others, of the group of Companies are thus discussed and determined, but are locally administered and applied by and through the Board of Directors and executive officers of each Company, in a manner not inconsistent with the general policies as determined by and for the group of Companies.

Unified operations of System

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32. The Companies of the Consolidated Edison Company of New York group, including those merged in 1936 into that Company, have for many years past been under a unified ownership, management and operation, subject to the regulation and supervision of the Public Service Commission of the State of New York under State laws providing for the performance of various public obligations. Thus the gas operations of the group of Companies have for many years been carried on in accordance with the terms of joint facility arrangements; and the manufacturing plants, holder-stations, pumping stations and transfer mains of the various Companies 4059 have been and are operated as an interconnected system. At the present time, the respondent Consolidated Edison Company conducts the gas business of respondents in New York City, and the Westchester Lighting Company conducts a gas business in Westchester County. In similar manner the generating facilities of the electric Companies of the group have been operated as a unit for the System electric load; and electric energy has been supplied by or to the Companies of the System in accordance with interchange of power arrangements, more fully set out in subsequent paragraphs of this stipulation.

4060 *Board's Exhibit No. 2*

33. The power and steam generating plants now operated by the respondents have been established from time to time, in different parts of the territory served, according to the demands for service; and the generating facilities are accordingly diversified as to location and time of first installation. The several electric generating plants of the respondent Consolidated Edison Company are operated as an integrated system, together with the plants of Brooklyn Edison Company, Inc., and The Yonkers Electric Light
4061 and Power Company, in the interests of efficiency and economy in operation; and the Sherman Creek, 66th Street, Gold Street, and Port Morris stations are used principally for peak loads and stand-by service. The East River, Hell Gate and Hudson Avenue stations contained, as of December 31, 1936, 69 per cent of total installed (rated) capacity of the System, and in 1936 generated 89 per cent of the total electrical output of the group of Companies. The respondent New York Steam Corporation has a connection with the East River and Waterside electric generating stations of the Consolidated Edison Company of New York, Inc., from
4062 which there is made available to it an additional supply of steam for resale to its customers.

34. As a result of such a unified operation of the Companies of the Consolidated Edison Company of New York group, the merger in 1936 of the various affiliated Companies into that Company did not effect material changes in the business and operations of the group as a whole. The business of the Companies merged is being carried on in substantially the same manner as such business was theretofore carried on by such Companies. Further simplification of corporate structures within the group would likewise have no material effect upon the character of the operations and business now carried on by the group of Companies as a whole.

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Manner of supplying electric requirements

35. The electric energy required by this group of Companies is supplied in principal part from the generating stations of the Consolidated Edison Company of New York, Inc., located in the Boroughs of Manhattan and The Bronx, in considerable part from the generating stations of Brooklyn Edison Company, Inc., located in the Borough of Brooklyn, City of New York, and in lesser part by purchase of electricity under an interchange of power arrangement with New York Power and Light 4064
Corporation as more fully stated in subsequent paragraphs of this stipulation, and in minor part from the generating station of The Yonkers Electric Light and Power Company. The power obtained by the Consolidated Edison Company of New York, Inc., from New York Power and Light Corporation, is, in part, delivered directly to the transmission and distribution lines of Westchester Lighting Company.

36. The electric generating facilities of the group of Companies are operated as a unit for the System electric load, through the medium of a System operator or load 4065
dispatcher, to secure the greatest over-all economy of production consistent with the highest degree of continuity. The total generating facilities of the group of Companies have a generating capacity of approximately 2,400,000 kilowatts. By reason of the 132,000 volt tie-line connection of 150,000 kilowatt capacity with New York Power and Light Corporation, additional electric energy is to that extent made available for the System. The instantaneous maximum System demand so far realized was registered on December 2, 1936, and amounted to 1,472,000 kilowatts. The interchange of power arrangements have been established as an additional source of supply in the interests of assuring continuity of service to the public and as a means of providing for the electric requirements of the respondent electric Companies on an economical basis.

4066 *Board's Exhibit No. 2*

Electric energy generated, purchased and sold

37. The following table shows, by Companies, the indicated facts as to the electric energy generated, and purchased and sold, by the Consolidated Edison Company group of Companies, during the years 1935 and 1936:

	Kilowatt Hours	
	1935	1936
Electric Energy Generated:		
Consolidated Edison Company of New York, Inc.	.....	88,632,250‡
4067 The New York Edison Company, Inc.	2,615,130,725*	3,284,707,152*
Brooklyn Edison Company, Inc.	1,972,421,489	2,263,041,040**
The Yonkers Electric Light and Power Company	.....	10,440,390
Total generated	4,587,552,214	5,646,820,832
Electric Energy Purchased:		
From New York Power and Light Corporation	905,891,000	392,160,000
From other sources within the State of New York	8,277	8,960
Total Purchased	905,899,277	392,168,960
Total Electric Energy Generated and Purchased	5,493,451,491	6,038,989,792
Electric Energy Sold:		
4068 Consolidated Edison Company of New York, Inc.	.....	86,238,782‡
The New York Edison Company, Inc.	2,687,301,525*	2,894,781,346*
Brooklyn Edison Company, Inc.	1,149,657,962	1,243,122,927
New York and Queens Electric Light and Power Company	493,462,221	543,719,150
Westchester Lighting Company	205,239,808	241,609,657
Bronx Gas and Electric Company	58,373,792	61,456,711†
The Yonkers Electric Light and Power Company	46,923,182	60,047,887
Total Sold	4,640,958,490	5,130,976,460
Electric energy supplied without direct charge	512,909	1,394,542
Electric energy used by the Companies	36,157,888	37,077,573
Total accounted for	4,677,729,287	5,169,448,575
Electric energy unaccounted for	815,722,204	869,541,217

* The figures shown for the period prior to August 1, 1935, are the combined amounts for The New York Edison Company and The United Electric Light and Power Company, which Companies were consolidated on that date to form The New York Edison Company, Inc. The figure shown for 1936 represents the energy sold, etc., by The New York Edison Company, Inc., for the period prior to its merger into the Consolidated Edison Company of New York, Inc., on December 22, 1936.

** The difference between this amount and the kilowatt hours generated at Hudson Avenue station represents station use at the Gold Street and 66th Street stations of the Brooklyn Edison Company, Inc.

Board's Exhibit No. 2

4069

Short circuit at Hell Gate station

38. On January 15, 1936, at about 4:16 P. M., a major interruption in 60-cycle service in the Borough of Manhattan north of 59th Street and in part of the Borough of The Bronx, was produced by a short circuit in the Hell Gate generating station at 134th Street and the East River. Direct current service to the customers supplied with direct current in the same Manhattan area was not affected. No similar interruption of alternating current service has occurred before or since. 4070

39. Service to some 40,000 customers, out of about 2,000,000 electric customers of the group of Companies, involving about ten per cent of the load, was affected. Other generating plants of the System in New York City almost immediately took over the load from such units at the Hell Gate plant as were affected by the short-circuit; and the tie-lines from the lines of the New York Power and Light Corporation, which tie-line had at first been put out of commission by the impact of the short-circuit on the switch in the Hell Gate station, was soon restored to availability as a source of supply, through other stations. Owing to the diversified locations of generating station capacity and reserves there was at no time a shortage of power supply; but the restoration of service required considerable work in the streets, on transformers, etc., and on consumers' premises (fuses, motors, etc.), to repair the effects of the impact on the local distribution lines in the limited area affected, as well as work in the electrical galleries at Hell Gate. Several telephone exchanges and branch post offices, and various industrial and commercial concerns, in the area affected, experienced a partial or total interruption of electric service. In The Bronx and a part of the Manhattan distribution area affected, service was restored within an hour. In the distribution areas below 129th Street, restoration of service was accomplished 4071

from time to time during the evening and night, and was completed the following morning.

40. An investigation and proceeding were conducted by the Public Service Commission of the State of New York (Case No. 8727) with respect to this interruption of service and the engineering improvements being made by the Company in the light of the resultant experience. Since the short-circuit of January 15, 1936, work then in progress has been completed by the Companies, along
4073 lines designed to localize further the effects of such a short-circuit upon local distribution lines and service, should such a short-circuit ever occur again in a major station.

Manner of supplying gas requirements

41. The only Companies of the Consolidated Edison Company group which supply gas service are the Consolidated Edison Company of New York, Inc., which supplies the Boroughs of Manhattan and The Bronx, Long Island City and the Third Ward (Flushing) of
4074 the Borough of Queens, and the Westchester Lighting Company, which supplies such parts of Westchester County (hereinbefore shown) as are supplied with gas. Their respective manufacturing plants, holder stations, pumping stations, transfer and distribution lines, and other properties, are operated as an interconnected system under arrangements for the joint use of such facilities. The gas supplied is manufactured at the plants of the Consolidated Edison Company of New York, Inc., in the Boroughs of Manhattan, The Bronx, and Queens. The Westchester Lighting Company maintains stand-by and emergency gas plants in Pelham Manor, New York, and Ossining, New York; but these plants do not ordinarily manufacture gas. The gas mains and system of the Consolidated Edison Company group are not interconnected with the gas mains of any other gas company or group of gas companies.

Board's Exhibit No. 2

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Gas produced and distributed

42. The following table shows the gas produced, the gas send-out, and the gas distributed, by the Companies of the Consolidated Edison Company group, during the years 1935 and 1936:

	Year 1935	Year 1936
Gas Produced (thousands of cubic feet)		
By the Consolidated Edison Company of New York, Inc.	21,218,425.0	31,486,959.0
By The Astoria Light, Heat and Power Company	16,897,869.0	7,808,166.0†
By New Amsterdam Gas Company	632,745.0	.....
Total gas produced (Mcf)	38,749,039.0	39,295,125.0
Total gas send-out* (Mcf)	38,749,055.0	39,286,022.0
Gas Distributed (thousands of cubic feet)		
By the Consolidated Edison Company of New York, Inc.	17,970,012.8	19,664,501.2
By New Amsterdam Gas Company incl. The East River Gas Company of Long Island City	3,360,158.2	3,267,565.3‡
By Central Union Gas Company	3,174,691.7	3,075,332.9‡
By Northern Union Gas Company	4,530,923.2	4,398,854.5‡
By The Standard Gas Light Company of the City of New York	1,444,168.0	700,220.8†
By New York and Queens Gas Company	1,163,654.0	564,365.5†
By Bronx Gas and Electric Company	1,341,545.6	1,336,861.6‡
By Westchester Lighting Company	4,681,377.6	5,008,432.5
Total gas distributed (Mcf)	37,666,531.1	38,016,134.3
Total gas used by the Companies (Mcf)	290,819.2	297,572.6
Total gas accounted-for	37,957,350.3	38,313,706.9
Balance—gas lost and unaccounted-for	791,704.7	972,315.1

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* Difference between gas produced and gas send-out is due to gas in storage holders.

† Five months ended May 31, 1936; merged into the Consolidated Edison Company on June 1, 1936.

‡ Eleven months and 23 days ended December 23, 1936; merged into Consolidated Edison Company on December 23, 1936.

4078 ✓ *Board's Exhibit No. 2*

V. ELECTRIC INTERCONNECTION WITH NEW YORK POWER AND LIGHT CORPORATION

43. The Consolidated Edison Company of New York, Inc., and its affiliated Companies have no interconnection with any other public utility company or system for the supplying or exchange of gas or steam. The Consolidated Edison Company of New York, Inc., and its affiliated Companies have no interconnection with any public utility company or system located outside of
4079 the State of New York, for the supplying or exchange of electric energy, and no interconnection for the supplying or exchange of electric energy with any company or system supplying electricity, gas or steam to the public, within or outside of the State of New York, except the interconnection with the New York Power and Light Corporation, which is an affiliated company of the Niagara Hudson Power Corporation. The New York Power and Light Corporation operates steam electric and hydro generating plants, and supplies electric service and gas service to consumers, all situated within the State of New York, in a
4080 large area in Eastern New York State, including territory north of Westchester County. The lines of the New York Power and Light Corporation are publicly stated to be interconnected with those of other companies of the same system, which are situated and operated within the State of New York.

44. The interconnection with the New York Power and Light Corporation is of 150,000 kilowatt capacity, and consists of two 132,000 volt lines running underground from the Hell Gate station, at 134th Street and the East River in the Borough of The Bronx, City of New York, to the Dunwoodie substation of The Yonkers Electric Light and Power Company, near the City line between New York and Yonkers, and thence over-

head to interconnect with the New York Power and Light Corporation's feeders at the County boundary between Westchester and Putnam Counties. The Consolidated Edison Company and The Yonkers Electric Light and Power Company, in their respective territories, own the transmission lines between the Hell Gate station and the boundary between the City of Yonkers and the Town of Greenburgh, in the County of Westchester, from which point the overhead transmission lines to the Putnam County line are owned by the Westchester Lighting Company. The overhead portion of the transmission lines from the Dunwoodie substation to the Yonkers City line and thence to Millwood is constructed along the Catskill Aqueduct right-of-way of the City of New York, supplemented by various small parcels of land and easements necessary to provide an adequate right-of-way. Beyond Millwood, the necessary right-of-way to the Putnam County line was locally acquired by the Westchester Lighting Company. 4082

45. None of the respondent Companies owns, or transmits electric energy over any part of, the transmission line north of the County boundary between Westchester and Putnam Counties. The electric energy transmitted by the respondents to the lines of the New York Power and Light Corporation is supplied by the latter to its consumers within the State of New York and is not transmitted, by it or by any of its affiliated companies, across any State boundary. None of the respondents has any interconnection with any company operating outside of the State of New York. 4083

Board's Exhibit No. 2

Quantities of energy sold through tie-line

46. The quantities of electric energy received from and delivered to the New York Power and Light Corporation, by the respondent Companies, through this interconnection, vary from year to year and from time to time during each year, according to operating conditions and the demands for service in the territories of the respective parties to the interconnection. From its establishment, the transactions have been, by years:

Year	Kw. hrs. received from New York Power and Light Corporation	Kw. hrs. delivered to New York Power and Light Corporation	Net kw. hrs. purchased from New York Power and Light Corporation	Per cent energy ments Consol Edi Company
1932 (June 22 to Dec. 31)	24,358,950	....	24,358,950	0.5
1933	510,698,281	7,000	510,691,281	10.2
1934	553,281,230	3,751,500	549,529,730	10.4
1935	905,924,000	33,000	905,891,000	16.5
1936	406,068,000	13,908,000	392,160,000	6.5
1937 (To April 30)	216,700,000	108,000	216,592,000	9.9

Board's Exhibit No. 2 4087

Sales through tie-line by months

47. During 1935 and 1936, the quantities of electric energy interchanged and sold, by and between the Consolidated Edison Company of New York, Inc., or its predecessors in electric operations, and the New York Power and Light Corporation, were as follows, by months:

Month of 1935	Kilowatt hours delivered by Consolidated Edison Company to New York Power and Light Corporation	Kilowatt hours delivered by New York Power and Light Corporation to Consolidated Edison Company	Net kilowatt hours sold by New York Power and Light Corporation to Consolidated Edison Company
January	20,000	81,935,000	81,915,000
February	0	80,041,000	80,041,000
March	0	99,501,000	99,501,000
April	0	100,100,000	100,100,000
May	0	93,469,000	93,469,000
June	0	71,998,000	71,998,000
July	0	93,538,000	93,538,000
August	2,000	58,446,000	58,444,000
September	0	42,591,000	42,591,000
October	2,000	39,556,000	39,554,000
November	0	72,441,000	72,441,000
December	9,000	72,308,000	72,299,000
Net sales during year			905,891,000

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Month of 1936			
January	167,000	42,764,000	42,597,000
February	545,000	20,482,000	19,937,000
March	0	85,536,000	85,536,000
April	0	88,396,000	88,396,000
May	0	69,914,000	69,914,000
June	938,000	11,824,000	10,886,000
July	3,498,000	2,660,000	*838,000*
August	5,197,000	1,880,000	*3,317,000*
September	1,604,000	2,249,000	645,000
October	1,065,000	12,370,000	11,305,000
November	433,000	31,352,000	30,919,000
December	461,000	36,641,000	36,180,000
Net sales during year			392,160,000

4090

Board's Exhibit No. 2

VI. PURCHASE OF MATERIALS AND DISPOSAL OF RESIDUAL BY-PRODUCTS

48. The respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York Steam Corporation, purchase coal, oil, and other materials, for use in the production of electricity, gas or steam. The purchases of coal, oil, copper and other major materials, by and for the requirements of any of the group of respondent Com-
4091 panies, are supervised by, and are negotiated with the assistance and advice of, a central purchasing department maintained by the respondent Consolidated Edison Company of New York, Inc. Contracts for the supplying of coal, oil, and like major materials, are executed by the particular Company, for its requirements. Delivery of the materials contracted for is made to the particular Company, upon its order or requisition to the seller; and payment therefor to the seller is made by the Company receiving the materials.

Purchases of coal

4092 49. The quantities of coal delivered to the Companies and the total amounts paid therefor, in 1935 and 1936, by Companies, for *electric* operations, were as follows:

	1935		1936	
	Net Tons of coal	Amount paid	Net Tons of coal	Amount paid
Consolidated Edison Company of New York, Inc., and its predecessor Companies	1,719,492	$ 8,055,211	2,203,316	$10,351,438
Brooklyn Edison Company, Inc.	968,440	4,714,376	1,108,692	5,341,010
Totals for coal purchased for *electric* operations	2,687,932	$12,769,587	3,312,008	$15,692,448

Board's Exhibit No. 2 4093

50. The quantities of coal delivered (only to the respondent Consolidated Edison Company), and the total amounts paid therefor, in 1935 and 1936, for *gas* operations, were as follows:

	1935		1936	
	Net Tons of coal	Amount paid	Net Tons of coal	Amount paid
Consolidated Edison Company of New York, Inc.	1,210,988	$6,094,246	897,267	$4,446,400
Totals for coal purchased for *gas* operations	1,210,988	$6,094,246	897,267	$4,446,400

4094

The quantities of coal delivered to the New York Steam Corporation, and the amounts paid therefor, in 1935 and 1936, for *steam* operations, were as follows:

	1935		1936	
	Net Tons of coal	Amount paid	Net Tons of coal	Amount paid
New York Steam Corporation	766,022	$3,083,166	766,177	$3,085,913

Total quantities of coal delivered

51. The total quantities of coal delivered for gas, electric and steam production, for the years 1935 and 1936, were: 4095

	1935 Net tons of coal	1936 Net tons of coal
Electric Operations	2,687,932	3,312,008
Gas Operations	1,210,988	897,267
Steam Operations	766,022	766,177
Totals	4,664,942	4,975,452

The total amounts paid by the respondents for coal for such uses were $21,946,999 in 1935 and $23,224,761 in 1936.

4096 *Board's Exhibit No. 2*

Plants to which coal was delivered

52. The coal purchased and received for *electric* operations, in 1935 and 1936, was delivered to the following plants:

Plant	Net Tons of coal in 1935	Net Tons of coal in 1936
Hudson Avenue	953,150	1,103,916
Gold Street	.....	4,776
Rossville (Storage)	15,290	.....
4097 Waterside	228,801	325,754
East River	583,035	664,749
Astoria (Storage)	13,986	14,254
Sherman Creek	126,239	207,274
Hell Gate	764,330	938,193
Port Morris	.....	40,559

The coal purchased and received for *gas* operations, in 1935 and 1936, was delivered to the following plants:

Plant	Net Tons of coal in 1935	Net Tons of coal in 1936
*Astoria Hunts Point	1,210,988	897,267

4098 *The coal purchased and received for gas operations was delivered to storage, and was transferred to each plant as required.

The coal purchased and received for *steam* generation was delivered to the plants of the New York Steam Corporation.

Origins of coal purchased

53. Purchases of coal, oil, and other materials are made only from non-affiliated producers or dealers. None of the respondents owns or operates, or is interested in, directly or indirectly, any mine, well, refinery, processing establishment or factory, from which it purchases or receives materials used in the production of electricity, gas or steam (excepting by-products produced in the respondents' own gas plants and used in their own

plants as fuel). The coal purchased and delivered to the Consolidated Edison Company of New York, Inc., and its affiliated Companies was mined outside of the City and State of New York, and was brought to the various plants in New York City by rail and barge or by rail and steamship. Most of the coal purchased by the Companies of the Consolidated Edison Company group in 1935 and 1936 was bought under contract. About 35,000 tons were purchased as "spot" coal each year.

Deliveries of coal 4100

54. Of the total tonnage of coal purchased and delivered to the Companies in 1935 and 1936, the points of delivery to and receipt by the respondent Companies were as follows:

Point of delivery	Net Tons of coal in 1935	Net Tons of coal in 1936
F.o.b. mines in other States	2,011,570	1,981,235
Alongside stations in New York City	1,121,404	1,437,802
New York Harbor terminals of railroads in the State of New Jersey	1,531,968	1,556,415
Totals	4,664,942	4,975,452

4101

Coal storage yards

55. The Consolidated Edison Company of New York, Inc., has storage yards for the storage of current and reserve supplies of *coal*, for electric, gas and steam operations. The locations of these coal storage yards, and the approximate capacity of each in tons, are as follows:

Location of storage	Approximate capacity in tons of coal
Hunts Point—Hunts Point Avenue and East River, Bronx	150,000
Astoria—20th Avenue and 21st Street, Queens	375,000
East River—East River and 14th Street, Manhattan	15,000
Hell Gate—134th Street and Locust Avenue, Bronx	50,000
Rossville—Staten Island	50,000
Total storage	640,000

4102 *Board's Exhibit No. 2*

Methods of delivery and handling

55. The respondents do not own or operate any ships, barges, tugs, or freight-cars, for the transportation or delivery of coal, or any other materials, from the point of receiving delivery to the stations or storage yards of the respondents. The respondents own and operate five barges for conveying their coke from one of their stations to another, along the East River. Where the point of receiving delivery of coal is other than at a
4103 station or storage yard of one of the respondents, the transportation and handling of the coal thence to one of the stations or yards of the respondents are done by persons who are employees of the carrier and are not employees of the respondents. At stations or yards of the respondents, about 186 employees are engaged in unloading coal from the boats and storing it in yards at the stations or at the storage points, from which it is later taken, as needed, for production purposes. The respondents own and operate unloading equipment and coal conveying equipment at their principal stations and coal yards. Weekly or monthly shipping instructions are
4104 given for delivery of coal and oil. The shipment of coal and oil to, and their receipt by, some of the respondents is practically continuous throughout the year.

Purchases of gas-oil for gas manufacture

56. The Consolidated Edison Company of New York, Inc., purchases gas-oil, under contracts, for its gas operations. Such oil is produced at wells and refineries outside the City and State of New York, and is delivered by the seller to the purchaser, within the City of New York, in barges alongside the gas plants. The deliveries of gas-oil, during 1935 and 1936, to plants of the Consolidated Edison Company of New York group of Companies, were as follows:

Gas plant	Gallons of oil in 1935	Gallons of oil in 1936
Astoria Hunts Point	95,877,238	114,370,343

Board's Exhibit No. 2

4105

Purchase of copper, etc.

57. The Consolidated Edison Company of New York, Inc., and certain of its affiliated Companies, buy copper from time to time as needed for electric construction and operations. Such purchases are made under contracts, and delivery is made to the purchaser within the State of New York. Such copper is mined outside of the State of New York. Substantial quantities of the copper bought are purchased from concerns outside of the State of New York.

4106

58. The quantities of *copper* purchased, during 1935 and 1936, and the total amounts paid therefor, by Companies, were as follows:

Company	1935		1936	
	Pounds of copper	Amount paid	Pounds of copper	Amount paid
Consolidated Edison Company of New York, Inc., and its predecessor Companies	144,960	$26,842	293,863	$50,952
Brooklyn Edison Company, Inc.	5,504	1,562	5,353	1,555
New York and Queens Electric Light and Power Company	3,524	585	3,894	653
Totals	153,988	$28,989	303,110	$53,160

4107

4108 *Board's Exhibit No. 2*

Purchases of cable

59. The total amounts paid for *cable* delivered to the Companies in 1935 and 1936, by Companies, for electric operations, were as follows:

Company	1935 Amount Paid	1936 Amount Paid
Consolidated Edison Company of New York, Inc., and its predecessor Companies	$1,694,367	$2,343,866
4109 Brooklyn Edison Company, Inc.	334,626	682,384
New York and Queens Electric Light and Power Company	735,940	1,071,344
Westchester Lighting Company	108,423	376,290
The Yonkers Electric Light and Power Company	21,771	185,956
Totals	$2,895,127	$4,659,840

Of the above amounts of cable, $1,651,451, or about 57 per cent, in 1935, and $3,266,012, or about 70 per cent, in 193[illegible] came from factories within the City or State of New York. Cable is purchased at a price per thousand feet. Delivery by the vendors to the respondents is made at store-rooms of the respondents or at locations where 4110 the cable is to be used within the State of New York. The total quantity in feet of cable delivered during the years 1935 and 1936 is:

Feet of assorted sizes of cable	
1935	1936
14,177,000	16,296,082

Board's Exhibit No. 2 4111

Purchases of other material and equipment

60. The Consolidated Edison Company of New York, Inc., and certain of its affiliated Companies, purchase other materials and equipment and supplies, including distribution and power transformers, switches, steel pipe, concrete, cement, electric meters, gas meters, incandescent lamps, etc., from dealers of whom most are located within the City or State of New York but some of whom are located outside of the State of New York. 4112
Such purchases are made under contracts or orders, which in most instances provide for delivery to one of the respondents within the State of New York; but in some instances delivery is made by the seller outside of the State of New York, and the transportation to one of the respondents is performed by others than employees of any of the respondents. Poles for new construction and for replacements in the electric distribution system of the respondents are similarly purchased from time to time as needed, under contract or as "spot" purchases are available. The approximate number of poles so purchased during 1935 and 1936, by Companies, and the amounts paid therefor, were: 4113

Company	1935		1936	
	Number of poles	Amount paid	Number of poles	Amount paid
Brooklyn Edison Company, Inc.	1,890	$23,760	1,533	$12,276
New York and Queens Electric Light and Power Company	483	6,159	865	11,046
Westchester Lighting Company	2,421	34,592	2,412	30,354
The Yonkers Electric Light and Power Company	170	3,144	241	3,571
Totals	4,964	$67,655	5,051	$57,247

Local municipal taxes on materials purchased

61. The sales in intra-state commerce of the various materials, equipment and supplies purchased by any of the respondents in New York City (other than raw materials to be consumed directly in generation or manufacture) have been subjected to a sales tax imposed and collected by the City of New York with the authority of the Legislature of the State of New York.

Disposal of residual by-products

62. Incidentally to the manufacture of gas, certain by-products of the distillation of coal and gas-oil are recovered. In quantity and value, the principal by-products are coke (including breeze), tar, light oils and sulphate of ammonia; and coke and tar by-products are in large part used by the Companies themselves as fuel in gas manufacture. The proceeds of such sales are treated as abatements of production expenses.

63. Principal by-products recovered in gas manufacture and sold to others (excluding quantities used by the Companies) were, in quantities sold and the net revenues received from such sales, in 1935 and 1936, as follows:

		Year 1935		Year 1936	
		Quantity	Amount	Quantity	Amount
Residuals					
Coke	Short Tons	332,748.42	$2,253,674.74	319,656.70	$2,096.87
Coke breeze	" "	491.25	1,956.85	71.00	
Water gas tar	Gals.	728,019	29,128.32	785,158	34,17
Drip oil	"	164,796	16,081.39	146,307	16,58
Reconditioned oil	"	25,819	2,694.47	75,052	7,28
Heavy tar	"	6,598,402	208,956.07	9,708,044	365,05
Light oil (Primary)	"	2,942,993	313,015.47	3,735,177	414,95
" " (Secondary)	"	.....	.....	134,993	8,09
Ammonia	Lbs.	555,940	5,559.40	72,150	72
Ammonia sulphate	"	25,281,410	248,540.49	17,891,026	185,47
Oven gas tar Coal gas tar	Gals.	8,792,364	331,794.92	9,070,526	355,61
	Totals		$3,411,402.12		$3,485,33

From time to time as these by-products are recovered in gas operations, they are sold by the respondent Consolidated Edison Company to manufacturers or jobbers in New York City, for commercial uses. Delivery to the purchaser is in each instance made at the gas plant, within the City of New York. Such by-products are used by the purchasers for such drug, chemical and commercial purposes as they see fit. Products manufactured by the purchasers, from such by-products, are sold by them in trade and commerce.

4118

VII. DATA AS TO PARTICULAR CONSUMERS

64. Of the approximately 2,324,800 consumers[1] served by the Consolidated Edison Company group of Companies with *electric* service, about 1,896,800 are residential consumers, and about 427,100 are commercial consumers (preponderantly small), religious, educational, charitable and hospital consumers, and wholesale consumers. There are about 23,328 wholesale consumers of the respondents' electric service in New York City, which wholesale consumers include apartment and loft buildings, department stores, office buildings, industrial 4119
establishments, and theatres. Such wholesale users are about 1.08 per cent of the total consumers of electric service supplied by the respondents in New York City, and the revenues therefrom amount to about 34.09 per cent of the total electric revenues of the respondents in New York City. Of the approximately 1,165,700 consumers served by the Consolidated Edison Company group of Companies with *gas* service, about 1,154,100 are on the classification for general uses and are predominantly residential. About 11,600 consumers use gas for heating and wholesale uses.

[1] All data in this stipulation, as to the number and classification of consumers, are based on the number of bills rendered to consumers in the month of December, 1930.

4120 *Board's Exhibit No. 2*

Regulatory requirements of the State of New York

65. Under the Public Service Law of the State of New York (Sec. 66, subdivision 12), the Public Service Commission is empowered to require electric corporations and gas corporations subject to its jurisdiction to file, print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of con-
4121 tract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such electric corporations or gas corporations; and the Public Service Commission has by Order and regulations required the respondents which are subject to its jurisdiction to file with the Commission Rate Schedules embodying Service Classifications and rates, terms, and forms of contracts applicable thereto, for all general consumers, and to file with the Commission copies of special contracts with such consumers of the respondents as are public utilities, from which requirements
4122 are excepted rates and contracts with Federal, State and municipal authorities. The respondents subject to the jurisdiction of the Public Service Commission have accordingly filed and printed, and have kept and do keep open to public inspection, such Rate Schedules applicable to service to general consumers and have also filed copies of special contracts made with public utilities.

The New York Public Service Law, the New York Transportation Corporations Law, other pertinent statutes enacted by the New York Legislature or by the local authorities in the territory of the respondents' operations, and the Rate Schedules and special service contracts filed by the respondents with the New York Public Service Commission may be referred to by any party hereto with the same force and effect as if their provi-

sions were fully set forth herein. As to the powers of the Public Service Commission to fix rates for service to governmental bodies, in the absence of a contract in force, reference is made to *City of New York* v. *Maltbie* (274 N. Y. 90, 98-99, decided April 27, 1937).

Particular consumer data furnished upon request

66. The respondent public utilities furnished, as of December 31, 1936, electric service under regularly filed Service Classifications as set forth in their Electric Rate 4124
Schedules, to approximately 2,323,900 consumers[1], exclusive of governmental agencies (about 800) served under filed Service Classifications; gas service under regularly filed Service Classifications as set forth in their Gas Rate Schedules, to approximately 1,165,700 consumers; electric service under special contracts to about 100 accounts; and gas service under special contract to the City of New York.

67. The Consolidated Edison Company group of Companies have among their customers various governmental and quasi-governmental agencies, and various 4125
private or quasi-public consumers, which have been specified by the Regional Attorney as those concerning which the respondents should supply information, without prejudice to respondents' contentions as to the materiality and relevancy of such information. To the consumers so specified, the following data are severally applicable:

A. Federal Government Agencies

Electric service for lighting, heat, power and miscellaneous local uses is supplied to the Federal Govern-

[1] All data in this stipulation, as to the number and classification of consumers, are based on the number of bills rendered to consumers in the month of December, 1936.

4126 *Board's Exhibit No. 2*

ment, within the franchise areas of the respective respondents, under a special contract with the United States Treasury Department. Instances of local premises so supplied are the General Post Office at No. 441 Eighth Avenue, the United States Barge Office, the United States Sub-Treasury, the Custom House at Bowling Green, the Appraiser's Warehouse at No. 201 Varick Street, the Federal Court House at Foley Square, a branch office of the Interstate Commerce Commission, a branch office of the United States Health Service, a branch office of the
4127 United States Weather Bureau, all in the Borough of Manhattan. Electric service is also supplied, under special contracts, to some 132 branch Post Offices and various Federal office buildings, warehouses, Courts, garages, Civilian Conservation Camps, etc., within the Boroughs of Manhattan, The Bronx, Brooklyn, and Queens, and in the City of Yonkers and Westchester County. The electrical energy used by the Federal Government on Governor's Island is supplied by the Consolidated Edison Company. The amounts paid therefor were $41,341 in 1935, and $42,617 in 1936.

Electricity supplied by the Consolidated Edison Com-
4128 pany is used for operating pneumatic tubes between postal stations, equipment in stations, elevators, ventilators, etc. Postal operations are conducted on a twenty-four hour basis.

Electric service is supplied also, under filed Service Classification agreements with the State Procurement Division of the United States Treasury Department, to various WPA agencies for theatre, educational, housing and other projects, in the Boroughs of Manhattan, The Bronx, Brooklyn, and Queens, and in the City of Yonkers and Westchester County.

The total amount paid by the Federal Government to the respondent Companies for electric service was about $388,145 in 1935 and about $492,380 in 1936.

Board's Exhibit No. 2

4129

Gas service is supplied, under filed Service Classification agreements with the United States Treasury Department, for appliance usage and emergency lighting in various Post Offices in Manhattan, The Bronx, Queens, and Westchester County, and for cooking in the House of Detention at Nos. 427-31 West Street, Borough of Manhattan, for cooking and laboratory purposes in the Veterans' Hospital at No. 130 West Kingsbridge Road, Borough of The Bronx, for processing purposes at the Assay Office at No. 45 South Street, Borough of Manhattan, etc.

4130

Gas service is supplied also, under filed Service Classification agreements with the State Procurement Division of the United States Treasury Department, to various WPA and PWA projects for water heating and space heating, for laboratory work and cooking purposes.

The total amount paid by the Federal Government to the respondent Companies for gas service was about $16,025 in 1935 and $14,870 in 1936.

B. Western Union Telegraph Company

4131

Electric service is supplied to the Western Union Telegraph Company, under a filed Service Classification, for the building located at No. 60 Hudson Street, Borough of Manhattan. The service is used for general lighting and power for the building, the operation of lighting and miscellaneous office power and for the operation of apparatus used in connection with the transmitting and receiving of telegraphic messages, both local and interstate. The Western Union Company maintains an electric generating plant, at this building, for an emergency supply of power for its requirements, in the event of an interruption of the central-station supply.

Electric service is also supplied for some 210 miscellaneous Western Union business offices,

4132 in the Boroughs of Manhattan, The Bronx, Brooklyn, and Queens, and in Westchester County.

The total amount paid by the Western Union Telegraph Company to the respondent Companies for electric service was about $129,420 in 1935 and $120,885 in 1936.

Gas service is supplied to several of the business offices for heating purposes. The total amount paid for such gas service was about $4,450 in 1935 and $4,825 in 1936.

4133

C. Postal Telegraph Company

Electric service supplied to the International Telephone Building Corporation, under a filed Service Classification, for the building located at Nos. 61-89 Broad Street, Borough of Manhattan, is in turn supplied the Postal Telegraph Company, occupying space in this building for executive offices and for sending and receiving equipment. The service is used by the Postal Telegraph Company for light and miscellaneous power and for the operation of transmitting and receiving equip-
4134 ment for telegraphic messages, both local and interstate.

Electric service is supplied also for various business offices of the Postal Telegraph Company, located in Manhattan, The Bronx, Brooklyn, Queens, and Westchester County. There are approximately 140 such offices.

The total amount paid to the respondent Companies by the Postal Telegraph Company and the International Telephone Building Corporation, for electric service, was about $72,665 in 1935 and $77,620 in 1936.

Gas service is also supplied under filed Service Classifications at various locations, for general use. The total amount paid for such service was about $450 in 1935 and $365 in 1936.

Board's Exhibit No. 2

4135

D. Radio Corporation of America

Electric service is supplied under a filed Service Classification to the RCA Communications, Inc., a subsidiary of Radio Corporation of America, for the building located at No. 66 Broad Street, Borough of Manhattan, and is used for building light and power, office light and power, and for the operation of switchboards, etc., for Trans-Atlantic radio service. The total amount paid for such service was about $35,700 in 1935 and $39,000 in 1936.

4136

No gas service is supplied at such location.

E. Columbia Broadcasting System

Electric service is supplied under filed Service Classifications to the Columbia Broadcasting System, Inc., at the following locations, in the Borough of Manhattan:

(a) No. 1699 Broadway and Nos. 213-23 West 53rd Street

Electric service is being supplied to the Columbia Broadcasting System, Inc., and is used for the operation of a studio theatre and to some extent for broadcasting purposes.

4137

(b) Nos. 251-9 West 45th Street

Atlantic Broadcasting Company is being supplied with electric service for the operation of a studio theatre and to some extent for broadcasting purposes. The Atlantic Broadcasting Company is a subsidiary of the Columbia Broadcasting System, Inc.

The total amount paid by the Columbia Broadcasting System to the respondents for electric service was about $3,220 in 1935 and $6,430 in 1936.

No gas service is supplied at any of the above premises.

4138 *Board's Exhibit No. 2*

F. New York Telephone Company

Electric service is supplied under filed Service Classifications to the New York Telephone Company for the building located at No. 140 West Street, Borough of Manhattan, which contains executive offices and a business office, together with a telephone exchange.

The electric service is used for the operation of public light and power and for light and miscellaneous power in offices and for the operation of a telephone exchange.

4139 Electric service is supplied also to the New York Telephone Company for the building located at Nos. 24-42 Sixth Avenue, Borough of Manhattan, used as a telephone exchange for handling local and long distance communications.

The New York Telephone Company maintains at several locations emergency electric generating plants, to supply its requirements if the central-station supply of energy should be interrupted.

The New York Telephone Company receives electric service at numerous other locations in Manhat-
4140 tan, The Bronx, Brooklyn, Queens, and Westchester County, for the operation of telephone exchanges, business offices, etc. There are approximately 45 such offices.

The total amount paid by the New York Telephone Company to the respondents for electric service was about $892,810 in 1935 and $851,150 in 1936.

Gas service is supplied under filed Service Classifications at various of these locations, for general uses. The total amount paid for such service was about $23,880 in 1935 and $23,460 in 1936.

G. Dow-Jones Tickers

Electric service supplied under filed Service Classifications to the Wall Street Journal Building Co., lo-

4141

cated at No. 44 Broad Street, Borough of Manhattan, is used by Dow-Jones and Company, Inc., publishers of the Wall Street Journal.

Electric service is used by Dow-Jones and Company, Inc., for light and miscellaneous power for offices and newspaper publishing, and for the operation of the transmitting equipment for its financial news ticker service. The amount paid for such electric service was about $13,725 in 1935 and $14,440 in 1936.

Gas is used for processing purposes. The amount 4142
paid for such gas service was about $915 in 1935 and $815 in 1936.

H. New York Stock Exchange

Electric service supplied under a filed Service Classification to the New York Stock Exchange Building Company for the building located at No. 11 Wall Street, Borough of Manhattan, is used by the New York Stock Exchange, for light and miscellaneous power in the operation of the Stock Exchange.

A related concern, the Stock Exchange Building and 4143
Quotation Company, located in the same premises, uses electric service for miscellaneous light and power and for the operation of the Stock Exchange ticker system for the sending out of stock quotations and transactions. This electric service is supplied under the agreement with the New York Stock Exchange Building Company.

The total amount paid for the above electric service was about $112,485 in 1935 and $113,945 in 1936.

No gas service is supplied at this location.

I. Floyd Bennett Air Field

Electric energy is supplied this airport, situated in the Borough of Brooklyn, for general purposes, such as building lighting, field illumination, a radio beam, ob-

struction lighting, outline lighting, and hangar machine shops. The energy is supplied to the City of New York under the special contract with the City, and amounted to about $6,150 in 1935 and $8,420 in 1936 at the average City rate.

J. The New York Times.

Electric service is supplied to The New York Times Company at Nos. 217-47 West 43rd Street, Borough of Manhattan, for the operation of all of the power equip-
4145 ment of the printing plant, public light and power, lighting and miscellaneous power, in the general, editorial and executive offices.

Electric service is supplied also to The New York Times Company at Nos. 1475-1485 Broadway, Borough of Manhattan, for all of the requirements of the building, which consists of "current events" sign, public light and power, and general requirements.

Electric service is received also by The New York Times Company, for the operation of various branch offices in the Boroughs of Manhattan and Brooklyn, and
4146 in Westchester County.

The total amount paid by The New York Times Company to the respondents for electric service was about $149,585 in 1935 and $152,260 in 1936.

Gas service is supplied to The New York Times Company at Nos. 217-47 West 43rd Street, Borough of Manhattan, for cooking and for various processing work. The amount paid for such gas service was about $2,780 in 1935 and $2,850 in 1936.

K. Companies operating electric ferries on the Hudson River

The respondent Companies do not supply electric service to any company operating an electric ferry on the Hudson River.

Board's Exhibit No. 2

Service is supplied to various slips from which steam-propelled ferries operate on the Hudson River. Such service is used in the operation of waiting rooms, ticket offices, signs, approaches, etc., all of which are located in New York State. 4147

Service is supplied, also under filed Service Classifications and under the special contract with the City of New York and under the special contract with the Federal Government, to ferry slips in the Boroughs of Manhattan, The Bronx, Brooklyn, and Queens, and in Westchester County, from which ferries operate on waters other than the Hudson River. 4148

L. Contracts relating to the furnishing of electricity to the navigation aids in New York Harbor

Electric energy for the operation of some of the devices used as navigation aids in New York Harbor, is furnished to the City of New York, under the special contracts with the City, to the extent of lights on a few bridges and for the ends of various piers and docks, and is furnished also, under the special contracts with the Federal Government, to the extent of some six light-houses and approximately eight beacon or harbor lights. 4149 The locations of these six light-houses are Fort Schuyler, North Brothers Island, Whitestone Point, foot of Dikeman Street in Brooklyn, foot of Beach Street in Brooklyn, and 26th Avenue and 2nd Street, Long Island City. The revenue from the Federal Government for this service (at the average Federal rate) was about $560 in 1935 and $540 in 1936.

M. Electricity supplied to railroad companies

The Consolidated Edison Company supplies electricity to the Board of Transportation of the City of New York for the operation of the Independent Subway System of local rapid transit railroads within the City of

4150 *Board's Exhibit No. 2*

New York. In 1935, about 221,283,676 kilowatt hours were supplied for this purpose; and in 1936 about 290,614,173 kilowatt hours.

Power for the operation of the subway and elevated railroad lines of the Interborough Rapid Transit System is supplied from the generating stations owned and operated by that system, in the Borough of Manhattan. For emergency requirements for power by either System, there is an interconnection between the lines of the
4151 Interborough System and those of the Consolidated Edison Company.

Power for the operation of the subway, elevated and street surface railroad lines of the Brooklyn-Manhattan Transit System is supplied from the generating stations owned and operated by that System, in the Borough of Brooklyn. For emergency requirements for power by either System, there is an interconnection between the lines of the Brooklyn-Manhattan Transit System and those of the Brooklyn Edison Company, Inc.

The Consolidated Edison group of Companies supplies electric energy under contracts with the New York
4152 Central Railroad Company. Electricity is used by the Railroad Company in part for the lighting and operation of the Grand Central Terminal, in part for the lighting and operation of various hotels, office buildings, and residential premises, upon terminal lands and appurtenant to the terminal property, and in part for the electric operation of local passenger trains upon the Hudson River Division of the Railroad as far as Croton, New York, and of through passenger trains as far as Harmon, New York. Various of the through trains so operated on that Division are a part of interstate transportation of passengers. Such through trains are changed from electric to steam operation at Harmon. Local passenger trains are operated electrically as far as Croton, New

York. No steam-propelled passenger trains ordinarily enter New York City on the Hudson River Division of this railroad. Electricity supplied by the Consolidated Edison Company is used for the air-conditioning of Pullman cars, in the yards of the New York Central Railroad Company within the City of New York. The total energy supplied to the New York Central Railroad Company for all purposes was 59,060,671 kilowatt hours in 1935 and 145,593,421 kilowatt hours in 1936. All such electricity was delivered by a respondent Electric Company to the Railroad Company at designated locations 4154
wholly within the State of New York; and none was transmitted by any of the respondents beyond the points of such delivery.

The Consolidated Edison Company also supplies electric energy under contracts with the New York, New Haven and Hartford Railroad Company. Electric energy is used by the Railroad Company for the operation of its freight terminals and for its operation of passenger trains out of Grand Central Terminal, some of which trains are only for intrastate traffic, and others of which are for interstate traffic. The total energy supplied to the New York, New Haven and Hartford Rail- 4155
road Company was 55,968,320 kilowatt hours in 1935 and 58,793,983 kilowatt hours in 1936. All such electricity was delivered to the Railroad Company by a respondent Electric Company at designated locations, wholly within the State of New York; and none was transmitted by any of the respondents beyond the points of such delivery.

The Consolidated Edison Company also supplies energy under contract with the Hudson and Manhattan Railroad Company. The electric energy is used by that Company for the lighting and operation of its Hudson Terminal Buildings at Nos. 30 and 50 Church Street, Borough of Manhattan, and for the operation of its local rapid transit railroad from 33rd Street and

4156 *Board's Exhibit No. 2*

Sixth Avenue, in the Borough of Manhattan, southward underground along Sixth Avenue to Christopher Street, Borough of Manhattan, and thence by tunnel to Jersey City and Hoboken; also an interurban railroad from the Hudson Terminal Buildings, through the tube or tunnel under the North River, to Jersey City and Newark. The electricity sold to the Railroad Company was and is delivered to it at designated locations wholly within the City of New York, and none was transmitted by any of the respondents beyond the points of such delivery.
4157 The electricity sold and delivered to the Hudson and Manhattan Railroad Company in 1935 was 54,805,398 kilowatt hours and in 1936 was 57,221,097 kilowatt hours.

Steam service supplied by the New York Steam Corporation is used to operate compressors, for the operation of switches in the tunnel of the Pennsylvania Railroad Company under the North River.

N. Port of New York Authority, etc.

The Consolidated Edison Company supplies electric energy under contracts with the Port of New York Authority. Electricity is used by such customer for the
4158 operation of its terminal and the Holland Tunnel, etc.

The Consolidated Edison Company also supplies electric energy to the Lehigh Valley Railroad Terminal for its terminal operation in Manhattan.

All such electricity was and is delivered by the Consolidated Edison Company to the customer at designated locations within the City of New York, and none was transmitted by the Consolidated Edison Company beyond the points of such delivery.

Of some 15 public bridges between Boroughs in the City of New York, all are supplied with electric energy for lighting, by the respondents, under the special contracts with the City of New York.

Board's Exhibit No. 2

4159

O. Highway lighting in Westchester County

In Westchester County various streets and boulevards which pass through villages are lighted by the Westchester Lighting Company or The Yonkers Electric Light and Power Company, under contracts with those villages. Street traffic signals are electrically operated under those contracts. The various parkways in Westchester County, maintained by the Westchester County Parkway Commission, are lighted by the Westchester Lighting Company or The Yonkers Electric Light and Power Company, under contracts with the County of Westchester. All such energy so delivered for street and parkway lighting was and is delivered and used wholly within Westchester County. Various parkways and highways in Westchester County are used by the public to reach main highways outside of Westchester County.

4160

P. Steamship piers

A majority of the piers of trans-atlantic and coastal steamship companies, along the East River and the North River; in the Borough of Manhattan, are supplied with electric energy by the Consolidated Edison Company, for lighting, freight handling, and related uses, within the City of New York.

4161

4162 *Board's Exhibit No. 2*

VIII. NEW YORK STATE LABOR RELATIONS ACT

68. On May 20, 1937, the New York State Labor Relations Act became a law, with the approval of The Governor of the State of New York, as Chapter 443 of the Laws of 1937, and is by reference made a part hereof. The Act creates a New York State Labor Relations Board, with jurisdiction, powers and duties as therein provided, and will be effective on and after July 1, 1937.

4163 Dated, New York, June 2, 1937.

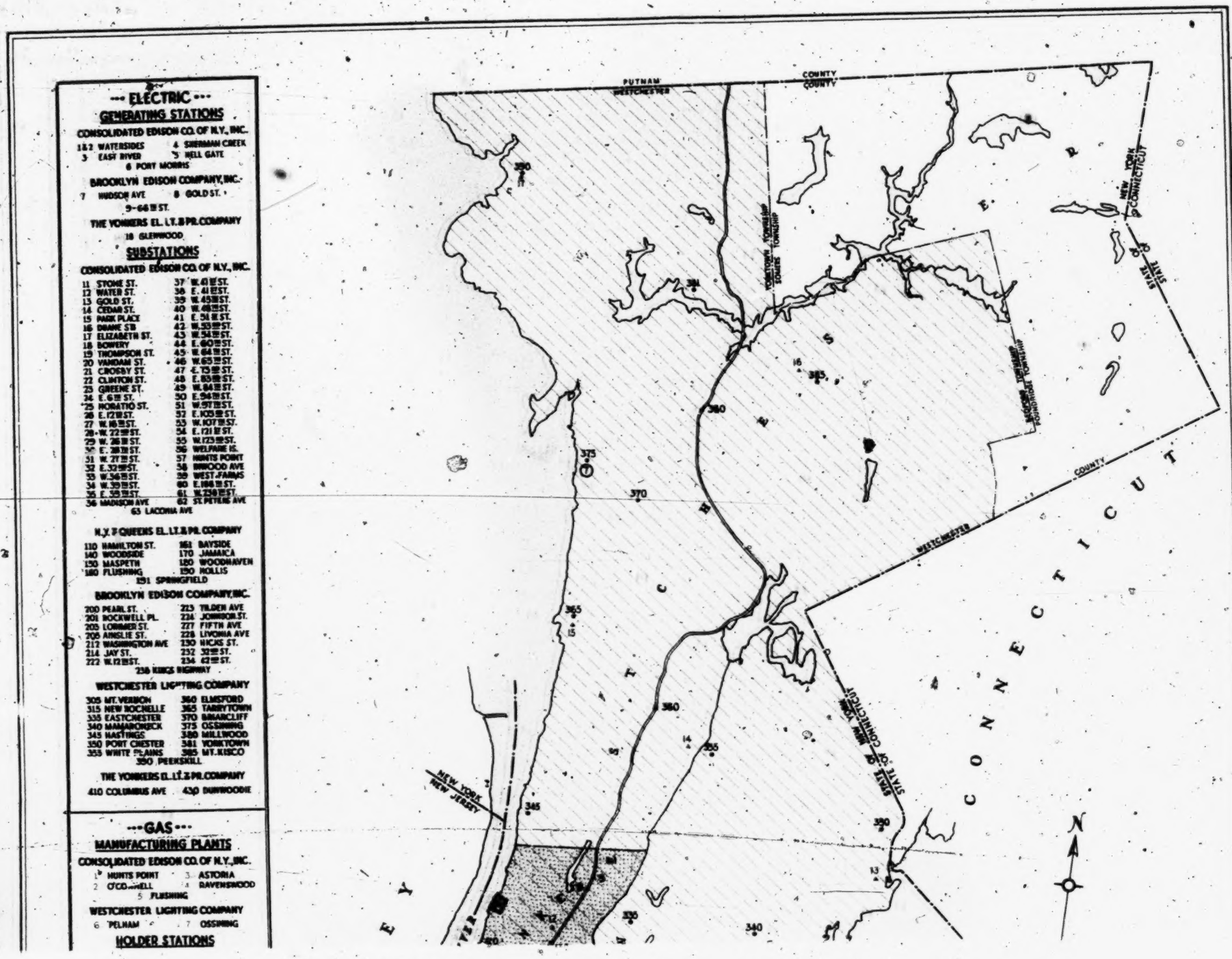
DAVID A. MOSCOVITZ
REGIONAL ATTORNEY FOR THE SECOND REGION, NATIONAL LABOR RELATIONS BOARD

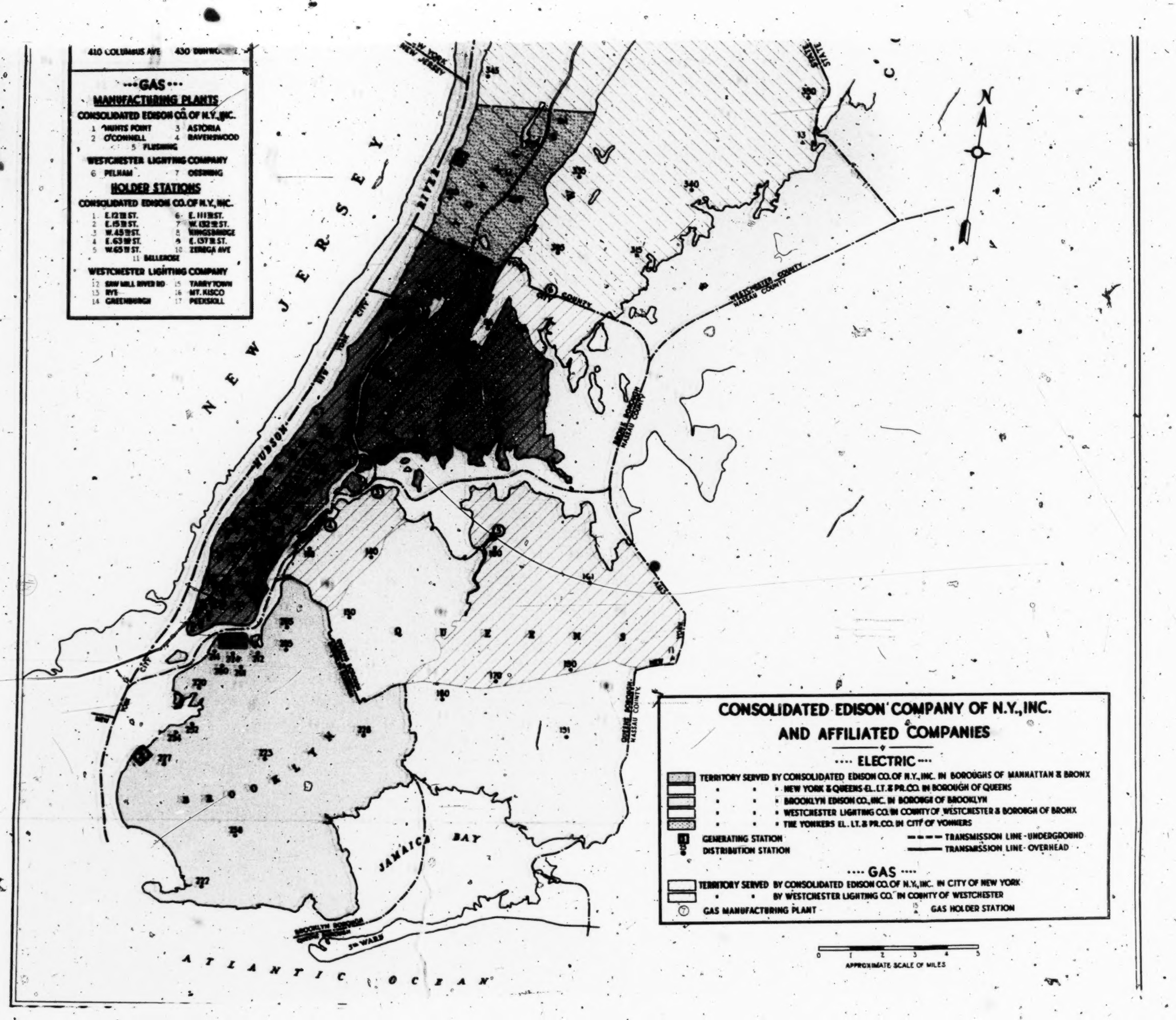
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., BROOKLYN EDISON COMPANY, INC., NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, and CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY

4164 By

WHITMAN, RANSOM, COULSON and GOETZ,
Attorneys for the respondents, appearing specially and only for the purposes stated in the Notice of Motion dated May 17, 1937.

EXHIBIT NO 1


--- ELECTRIC ---
GENERATING STATIONS
CONSOLIDATED EDISON CO. OF N.Y., INC.
1 & 2 WATERSIDES
3 EAST RIVER
4 SHERMAN CREEK
5 HELL GATE
6 PORT MORRIS
BROOKLYN EDISON COMPANY, INC.
7 HUDSON AVE
8 GOLD ST.
9-66TH ST.
THE YONKERS EL. LT. & PR. COMPANY
18 GLENWOOD
SUBSTATIONS
CONSOLIDATED EDISON CO. OF N.Y., INC.
11 STONE ST.
12 WATER ST.
13 GOLD ST.
14 CEDAR ST.
15 PARK PLACE
16 DUANE ST.
17 ELIZABETH ST.
18 BOWERY
19 THOMPSON ST.
20 VANDAM ST.
21 CROSBY ST.
22 CLINTON ST.
23 GREENE ST.
24 E. 6TH ST.
25 HORATIO ST.
26 E. 12TH ST.
27 W. 16TH ST.
28 W. 22ND ST.
29 W. 26TH ST.
30 E. 38TH ST.
31 W. 27TH ST.
32 E. 32ND ST.
33 W. 36TH ST.
34 W. 39TH ST.
35 E. 35TH ST.
36 MADISON AVE
37 W. 41ST ST.
38 E. 41ST ST.
39 W. 45TH ST.
40 W. 48TH ST.
41 E. 54TH ST.
42 W. 53RD ST.
43 W. 54TH ST.
44 E. 60TH ST.
45 W. 64TH ST.
46 W. 65TH ST.
47 E. 75TH ST.
48 E. 83RD ST.
49 W. 84TH ST.
50 E. 94TH ST.
51 W. 97TH ST.
52 E. 105TH ST.
53 W. 107TH ST.
54 E. 121ST ST.
55 W. 125TH ST.
56 WELFARE IS.
57 HUNTS POINT
58 BRWOOD AVE
59 WEST FARMS
60 E. 180TH ST.
61 W. 230TH ST.
62 ST. PETERS AVE
63 LACONIA AVE
N.Y. & QUEENS EL. LT. & PR. COMPANY
110 HAMILTON ST.
140 WOODSIDE
150 MASPETH
180 FLUSHING
181 BAYSIDE
170 JAMAICA
180 WOODHAVEN
190 HOLLIS
191 SPRINGFIELD
BROOKLYN EDISON COMPANY, INC.
200 PEARL ST.
201 ROCKWELL PL.
203 LORIMER ST.
205 AMELIE ST.
212 WASHINGTON AVE
214 JAY ST.
222 W. 12TH ST.
213 TILDEN AVE
224 JOHNSON ST.
227 FIFTH AVE
228 LIVONIA AVE
230 HICKS ST.
232 32ND ST.
234 42ND ST.
238 KINGS HIGHWAY
WESTCHESTER LIGHTING COMPANY
305 MT. VERNON
315 NEW ROCHELLE
335 EASTCHESTER
340 MAMARONECK
345 HASTINGS
350 PORT CHESTER
353 WHITE PLAINS
360 ELMSFORD
365 TARRYTOWN
370 IRVINGTON
375 OSSINING
380 MILLWOOD
381 YORKTOWN
385 MT. KISCO
390 PEEKSKILL
THE YONKERS EL. LT. & PR. COMPANY
410 COLUMBUS AVE
430 DUNWOODIE
--- GAS ---
MANUFACTURING PLANTS
CONSOLIDATED EDISON CO. OF N.Y., INC.
1 HUNTS POINT
2 C'CO...HELL
3 ASTORIA
4 RAVENSWOOD
5 FLUSHING
WESTCHESTER LIGHTING COMPANY
6 PELHAM
7 OSSINING
HOLDER STATIONS
PUTNAM COUNTY
WESTCHESTER COUNTY
NEW YORK & CONNECTICUT STATE LINE
NEW YORK & CONNECTICUT STATE LINE
NEW YORK NEW JERSEY
CONNECTICUT
HUDSON RIVER
EAST RIVER
LONG ISLAND SOUND
N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430 DUNWOODIE
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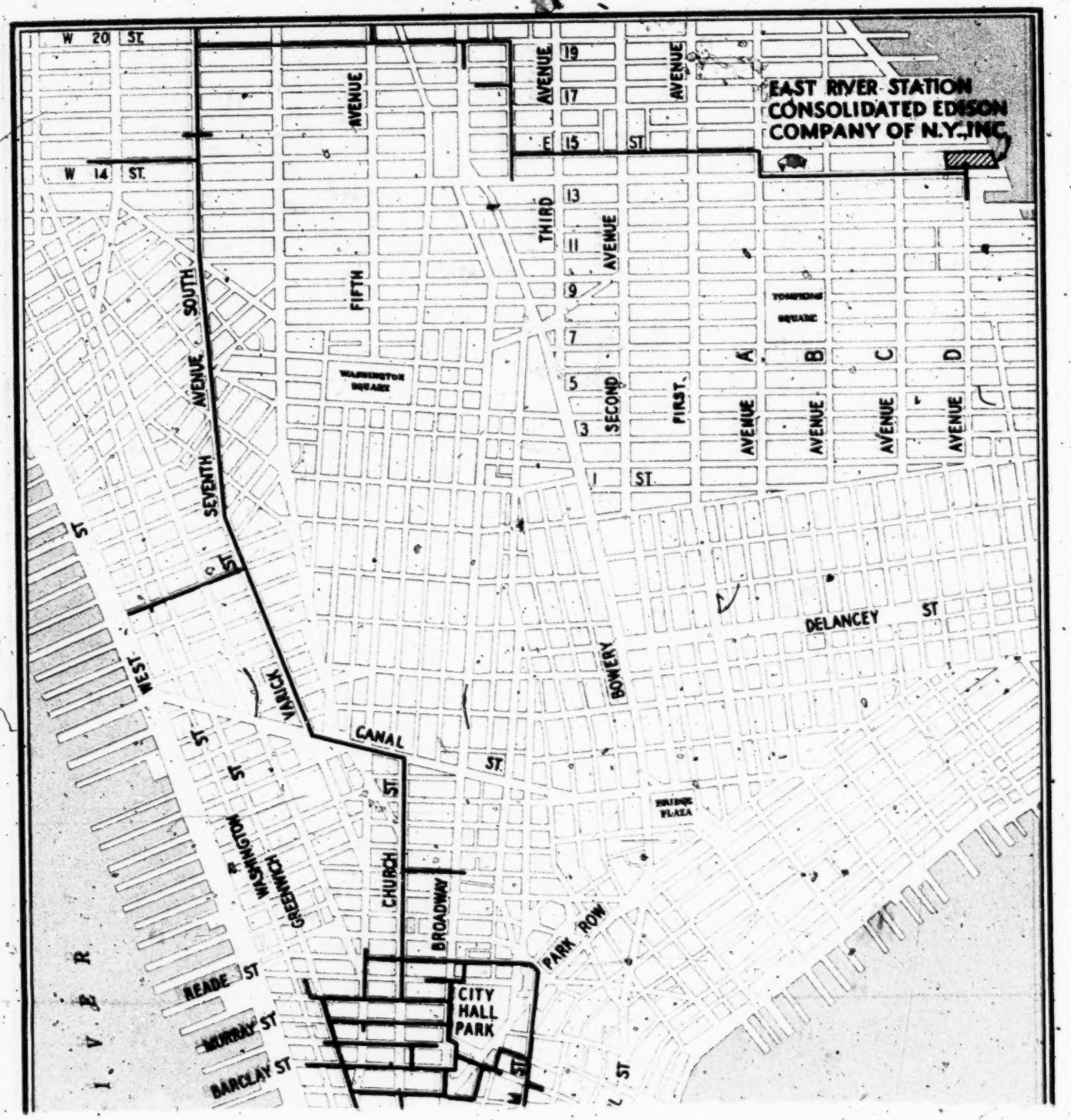
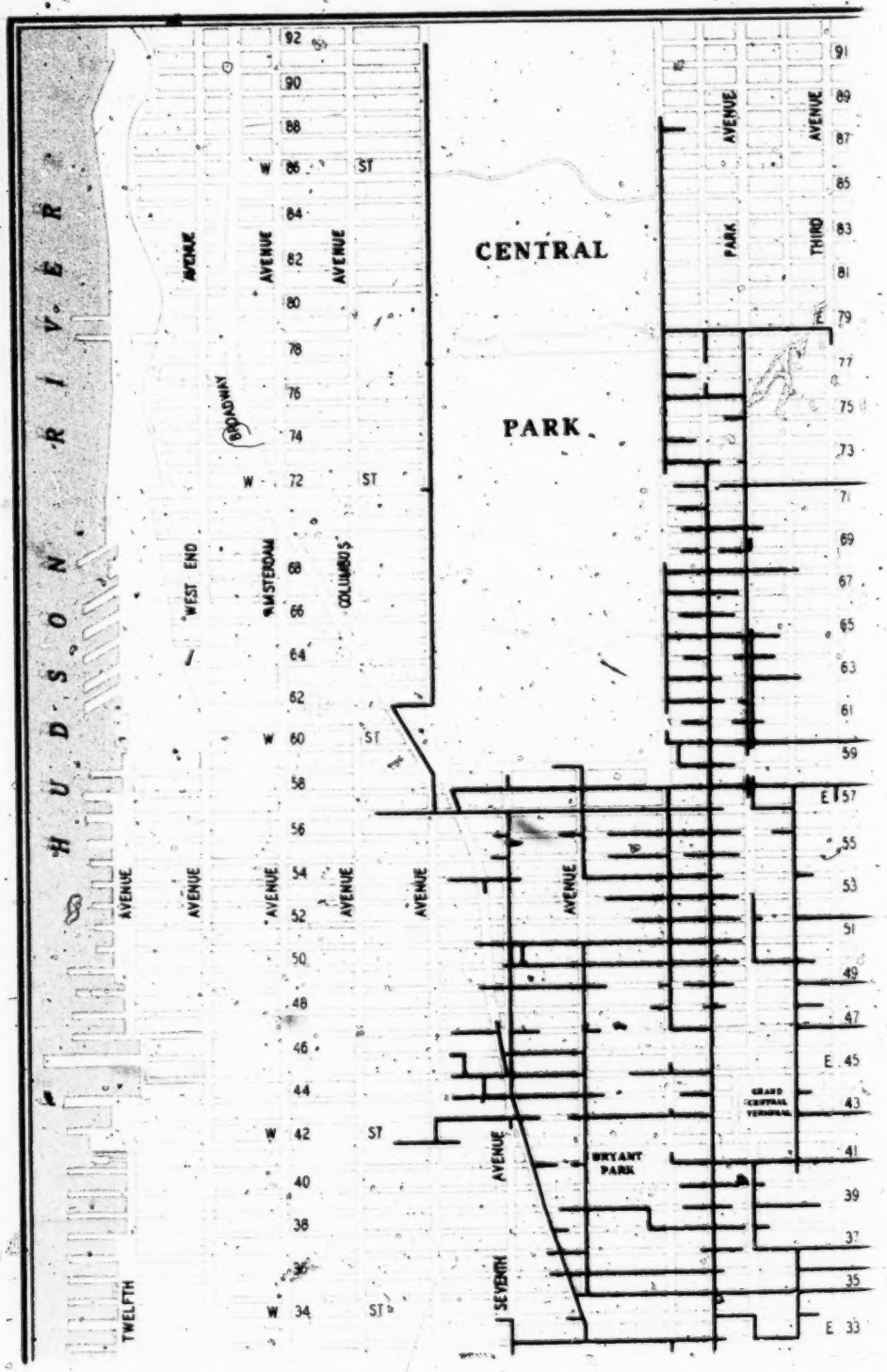
2 O'CONNELL
3 ASTORIA
4 RAVENSWOOD
5 FLUSHING
WESTCHESTER LIGHTING COMPANY
6 PELHAM
7 OSSINING
HOLDER STATIONS
CONSOLIDATED EDISON CO. OF N.Y., INC.
1 E. 12 ST.
2 E. 15 ST.
3 W. 45 ST.
4 E. 63 ST.
5 W. 65 ST.
6 E. 111 ST.
7 W. 132 ST.
8 KINGSBRIDGE
9 E. 137 ST.
10 ZEREGA AVE
11 BELLEROSE
WESTCHESTER LIGHTING COMPANY
12 SAW MILL RIVER RD
13 RYE
14 GREENBURGH
15 TARRYTOWN
16 MT. KISCO
17 PEEKSKILL
NEW JERSEY
HUDSON RIVER
NEW YORK CITY
NEW YORK
NEW JERSEY
STATE
WESTCHESTER COUNTY
NASSAU COUNTY
NASSAU COUNTY
QUEENS
NASSAU COUNTY
NASSAU COUNTY
BROOKLYN
JAMAICA BAY
ATLANTIC OCEAN
CONSOLIDATED EDISON COMPANY OF N.Y., INC.
AND AFFILIATED COMPANIES
...ELECTRIC...
TERRITORY SERVED BY CONSOLIDATED EDISON CO. OF N.Y., INC. IN BOROUGHS OF MANHATTAN & BRONX
NEW YORK & QUEENS EL. LT. & PR. CO. IN BOROUGH OF QUEENS
BROOKLYN EDISON CO., INC. IN BOROUGH OF BROOKLYN
WESTCHESTER LIGHTING CO. IN COUNTY OF WESTCHESTER & BOROUGH OF BRONX
THE YONKERS EL. LT. & PR. CO. IN CITY OF YONKERS
GENERATING STATION
DISTRIBUTION STATION
TRANSMISSION LINE - UNDERGROUND
TRANSMISSION LINE - OVERHEAD
...GAS...
TERRITORY SERVED BY CONSOLIDATED EDISON CO. OF N.Y., INC. IN CITY OF NEW YORK
BY WESTCHESTER LIGHTING CO. IN COUNTY OF WESTCHESTER
GAS MANUFACTURING PLANT
GAS HOLDER STATION
0 1 2 3 4 5
APPROXIMATE SCALE OF MILES

EXHIBIT #2

GENERATING STATIONS AND DISTRIBUTING MAINS OF NEW YORK STEAM CORPORATION





HUDSON RIVER

WEST ST

W 14 ST

SEVENTH AVENUE SOUTH

VARICK ST

WASHINGTON ST

GREENWICH ST

READE ST

MURRAY ST

BARCLAY ST

CORTLANDT ST

CEDAR ST

RECTOR ST

CHURCH ST

CANAL ST

BROADWAY

CITY HALL PARK

WILLIAM ST

BEAVER ST

WATER ST

BATTERY PARK

PARK ROW

PEARL ST

WALL ST

BURLING SLIP

EAST RIVER

BOWERY

DELANCEY ST

FIFTH

THIRD

SECOND AVENUE

FIRST

AVENUE A

AVENUE B

AVENUE C

AVENUE D

HUDSON RIVER

TWELFTH AVENUE

ELEVENTH AVENUE

WEST END AVENUE

TENTH AVENUE

AMSTERDAM

BROADWAY

NINTH AVENUE

COLUMBUS

EIGHTH AVENUE

SEVENTH AVENUE

SIXTH AVENUE

BROADWAY

FIFTH AVENUE

FOURTH AVENUE

LEXINGTON AVENUE

THIRD AVENUE

BRYANT PARK

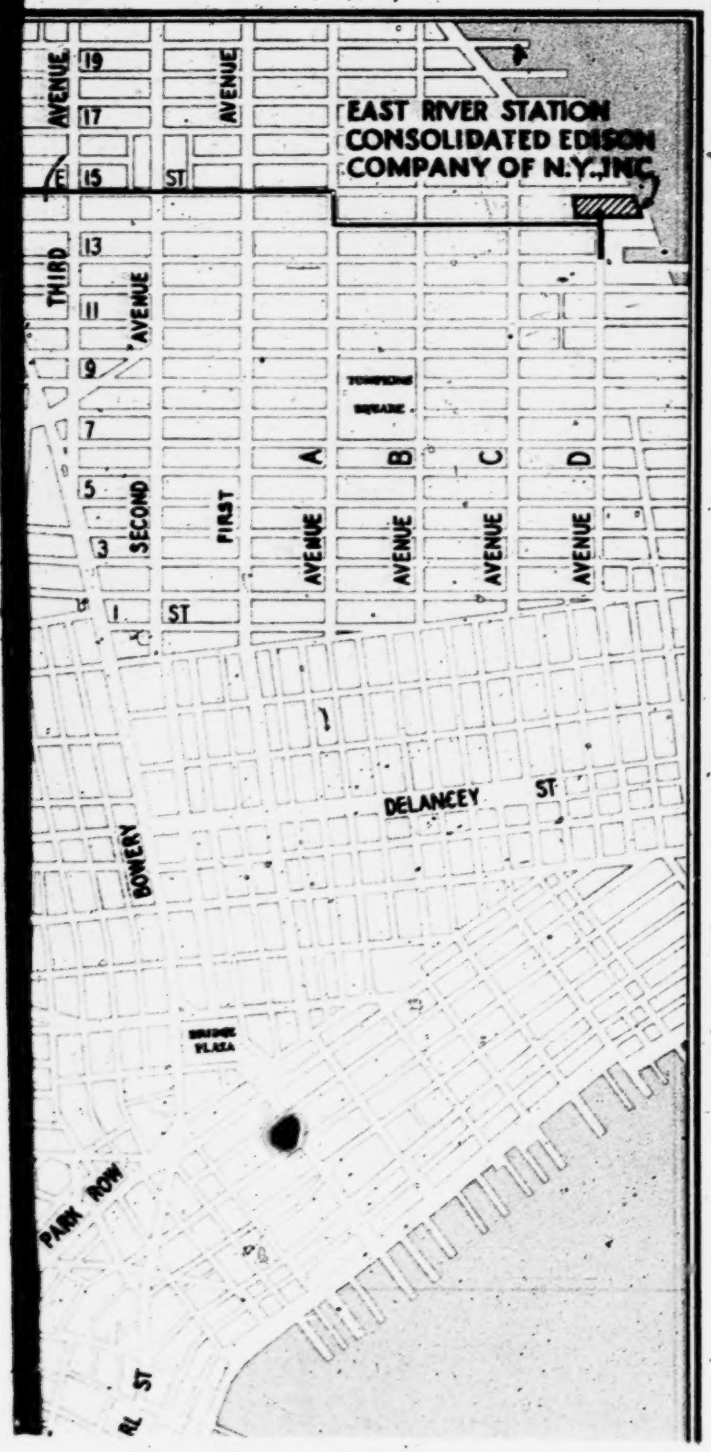
CENTRAL PARK

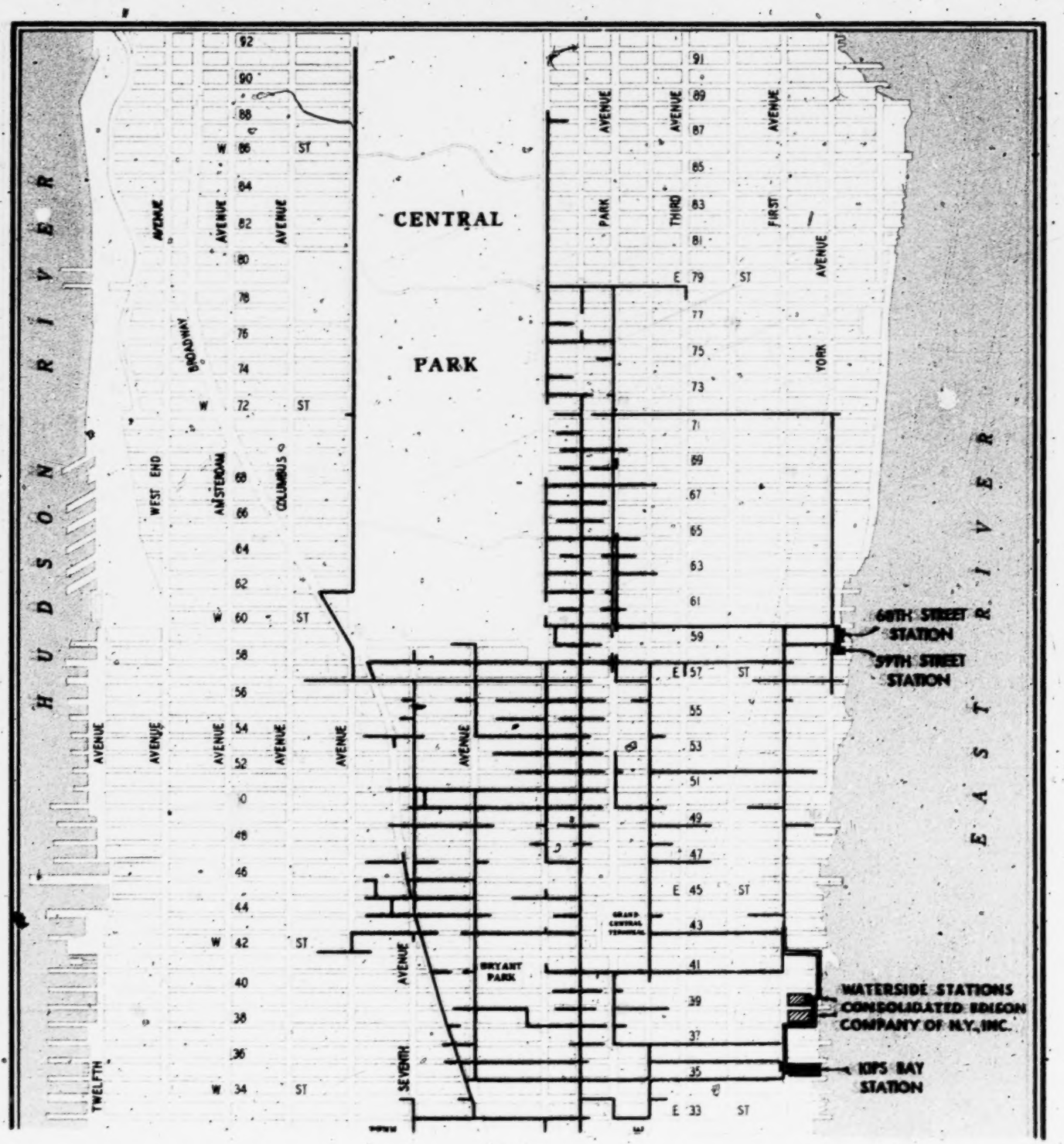
PARK

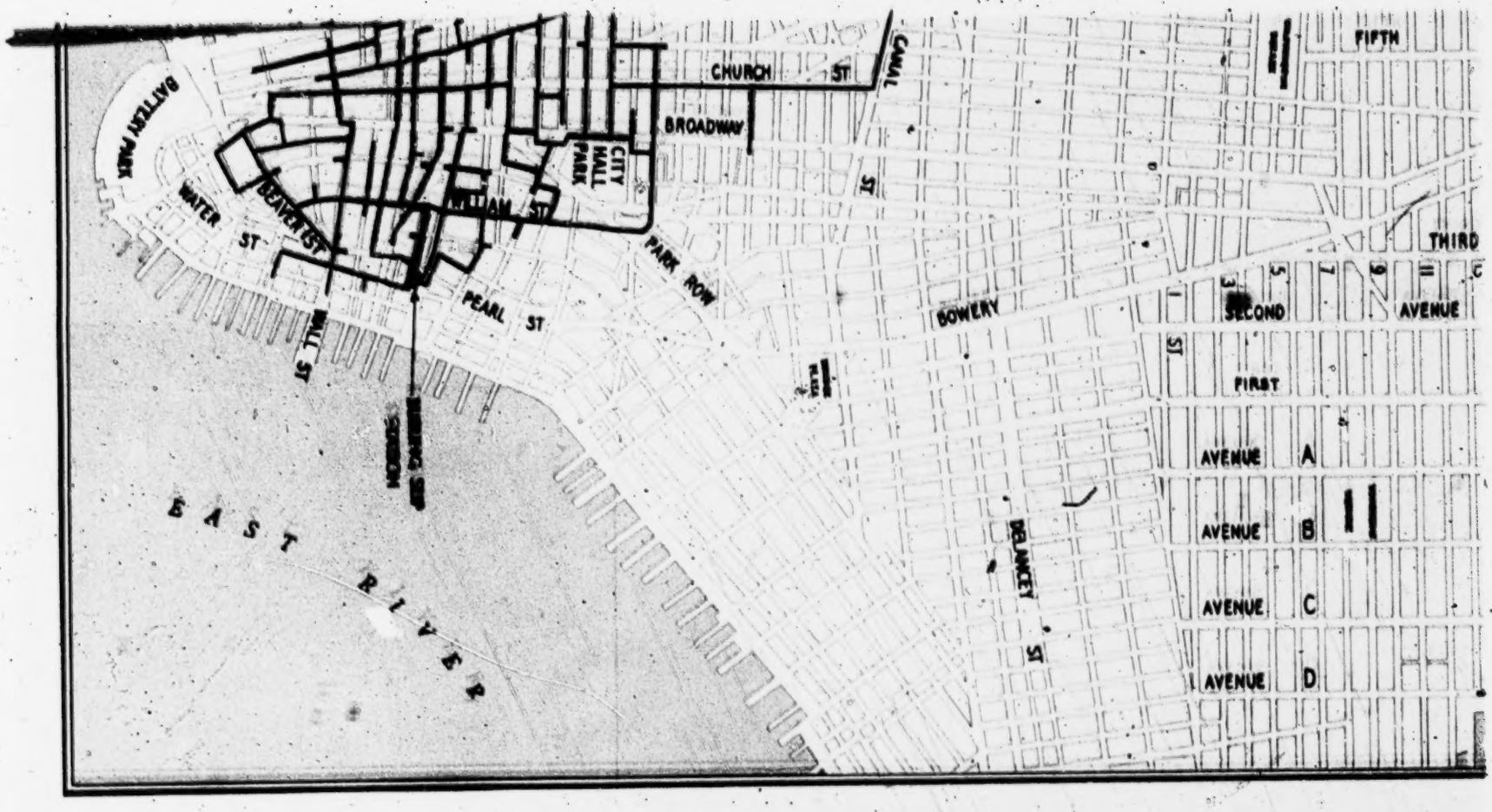
THIRD

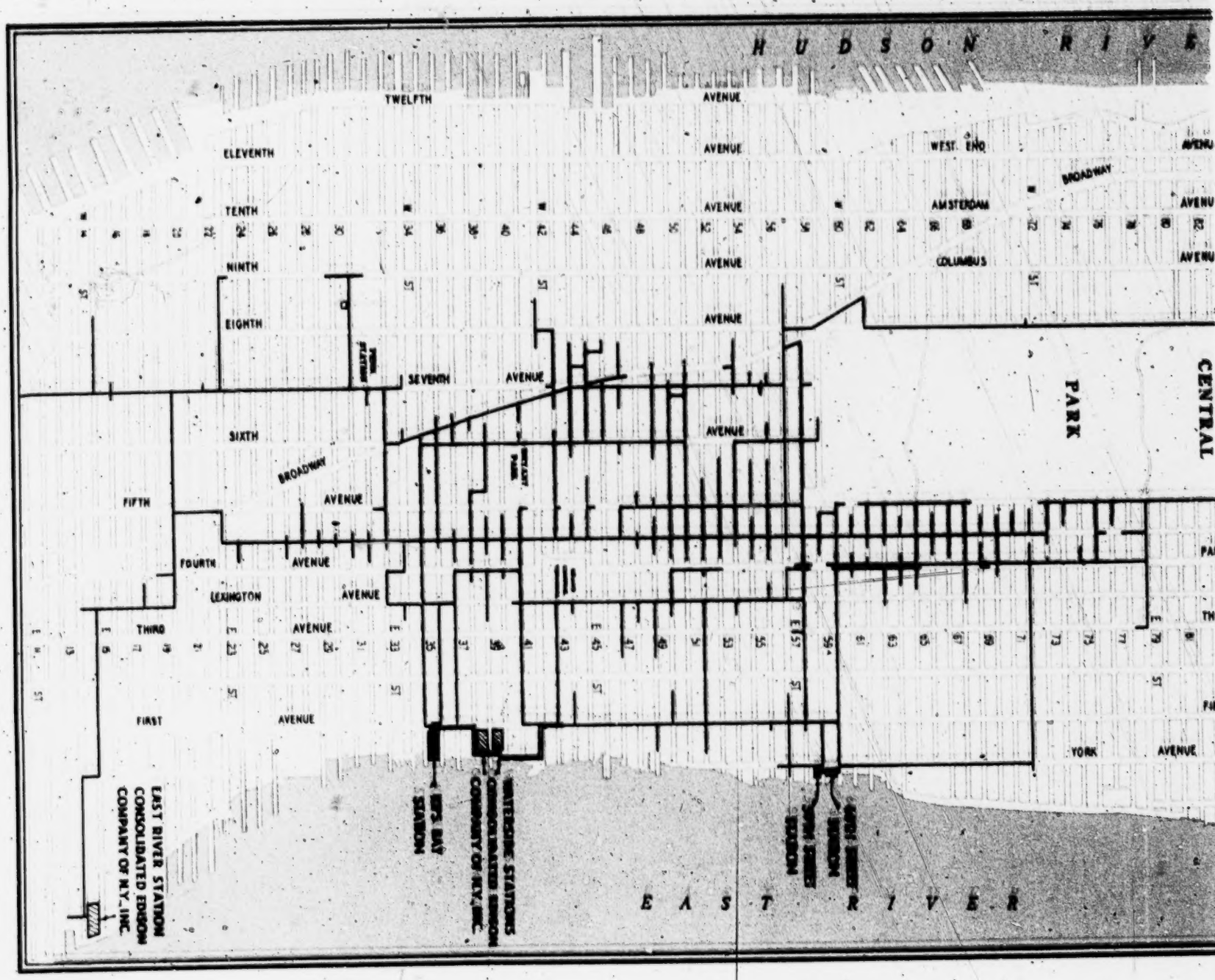
EXHIBIT #2

G STATIONS AND DISTRIBUTING MAINS OF NEW YORK STEAM CORPORATION






BATTERY PARK
WATER ST
BEAVER ST
WALL ST
PEARL ST
CHURCH ST
BROADWAY
CITY HALL PARK
PARK ROW
CANAL ST
BOWERY
DELANCEY ST
FIFTH
THIRD
SECOND
FIRST
AVENUE A
AVENUE B
AVENUE C
AVENUE D
EAST RIVER


HUDSON RIVER
TWELFTH AVENUE
ELEVENTH AVENUE
TENTH AVENUE
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EIGHTH AVENUE
SEVENTH AVENUE
SIXTH AVENUE
FIFTH AVENUE
FOURTH AVENUE
THIRD AVENUE
LEXINGTON AVENUE
FIRST AVENUE
WEST END AVENUE
BROADWAY
AMSTERDAM AVENUE
COLUMBUS AVENUE
PARK
CENTRAL
YORK AVENUE
EAST 59 ST
EAST RIVER CONSOLIDATED EDISON COMPANY OF N.Y., INC.
W. 59 ST. BAY STATION
WATERSIDE STATIONS CONSOLIDATED EDISON COMPANY OF N.Y., INC.
EAST RIVER STATION
EAST RIVER

4165

Board's Exhibit No. 4

COPY OF AN ORDER OF THE BOARD, DATED JUNE 2, 1937, DENYING THE PETITION AND MOTION OF THE RESPONDENT COMPANIES FOR A PRIOR AND SEPARATE HEARING AS TO JURISDICTION AND FOR DISMISSAL OF THE COMPLAINT FOR WANT OF JURISDICTION.

[Printed at page 38, *ante*]

4166

Board's Exhibit No. 5

NOTICE OF MOTION BY THE BOARD TO AMEND ITS COMPLAINT BY ADDING THE NAME OF STEPHEN L. SOLOSY AS ONE OF THE PERSONS NAMED IN PARAGRAPH 19 OF THE COMPLAINT AS HAVING BEEN DISCHARGED BY THE COMPANIES.

[Printed at page 40, *ante*]

4167

4168

Board's Exhibit No. 10

LETTER DATED NOVEMBER 1, 1934, FROM MR. WERSING TO MR. KENNEDY

11/1/34

Dear Mr. Kennedy

Through a mutual friend I have heard that you are becoming increasingly aware of the futility of our Employees' Representation Plan as an affective means of
4169 getting any tangible benefits for yourself and the men you represent.

I too have reached that same conclusion and I believe I have also found the answer to the question which this conclusion raised in my mind—the Brotherhood of Utility Employees of America of which I am now a member.

I should very much like to meet you and talk with you on this subject. Since I am working in the Main Office at night my only opportunity would be on a Saturday or Sunday.

4170 If you are interested won't you drop me a line.

Sincerely yours,

MARTIN A. WERSING
3248—30 St.
Long Island City.

Board's Exhibit No. 12 4171

REPLY DATED JANUARY 4, 1937, OF MR. EDWARD P. PREZZANO TO MR. STRAUB'S LETTER (RESPONDENT'S EXHIBIT No. 15).

BRONX GAS AND ELECTRIC COMPANY

E. P. PREZZANO
President

43 Westchester Square
Bronx, New York City
January 4, 1937

Mr. Harry J. Straub, 4172
43 Westchester Square,
Bronx, New York.

Dear Harry:

The receipt of your letter was a very gratifying start for my New Year—and with your permission, I shall pass it along to Mr. Wilder and Mr. Carroll that they may know of your appreciation.

I want to thank you for your thoughtfulness in writing to me, and assure you that it is my personal wish that the New Year may hold a full store of good health and success for you. 4173

Sincerely yours,

(Sgd) E. P. PREZZANO
President.

K

4174

Board's Exhibit No. 13

LETTER FROM MR. D. W. TRACY, PRESIDENT OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, TO MR. FLOYD L. CARLISLE, DATED APRIL 16, 1937.

D. W. TRACY,
International President

G. M. BUGNIAZET,
International Secretary

INTERNATIONAL BROTHERHOOD
4175 ELECTRICAL WORKERS
1200 Fifteenth Street, N. W.
Washington, D. C.

New York City,
April 16, 1937

Floyd L. Carlisle,
Chairman of Board,
Consolidated Edison Co. of N. Y., Inc.

Dear Sir:

Further in re my previous efforts in behalf of mem-
4176 bers of the International Brotherhood of Electrical Workers employed on the properties of the Consolidated Edison system and consistent with the rights of those employees to bargain collectively through the Brotherhood, I as International President of the IBEW, demand recognition of our organization as the collective bargaining agency and herewith submit the attached proposal of agreement for negotiation on a collective bargaining basis between the Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers.

The writer is registered at the Roosevelt Hotel in New York City awaiting your prompt reply to this proposal.

Sincerely,

(Signed) D. W. TRACY
International President
Brotherhood Electrical Workers

4177

Board's Exhibit No. 13(a)

REPLY OF MR. CARLISLE TO MR. TRACY, DATED APRIL 20, 1937

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Office of
Chairman of Board

April 20, 1937

4178

Mr. D. W. Tracy, International President
International Brotherhood of Electrical Workers,
1200 Fifteenth Street, N.W.,
Washington, D.C.

Dear Sir:

I acknowledge receiving your letter of April 16th.

Consolidated Edison Company of New York, Inc., agrees to bargain collectively through the Brotherhood, and will proceed with negotiations looking to a contract along the lines of the proposed agreement enclosed.

4179

Yours very truly,

FLOYD L. CARLISLE

4180

Board's Exhibit No. 14

MEMORANDUM OF AGREEMENT BETWEEN CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND ITS LOCAL UNION No. B829, DATED JUNE 15, 1937.

Memorandum of Agreement

Between

4181

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and the

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Through Its

LOCAL UNION No. B829

4182

Effective June 15th, 1937

Agreement between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (hereinafter referred to as the "Edison Company") and the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (hereinafter called the "Brotherhood"):

WITNESSETH: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of em-

ployees of the Edison Company who are members of the Brotherhood and enable the Edison Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted electric service in its territory, the parties hereto agree with each other as follows:

ARTICLE I

Scope

1. This agreement shall apply to all employees of the Edison Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees. 4184

ARTICLE II

No Discrimination

2. The Edison Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Edison Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Edison Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Edison Company time or property. 4185

ARTICLE III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight

4186 *Board's Exhibit No. 14*

(8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week
4187 or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Edison Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular
4188 holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

ARTICLE IV

Vacations

5. Each employee who was in the employ of the Edison Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after

September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

RIDER

Correcting Article IV, Section 5

VACATIONS

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937. 4190

Executed, June 15th, 1937.

{ J. J. D. / W. J. E. / E. F. G. / D. W. T. } { R. H. T. / C. M. B. JR. }

4191

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Edison Company, in order to insure orderly operation and adequate and continuous service to the public.

ARTICLE V

WAGES AND CLASSIFICATIONS

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be

4192

Board's Exhibit No. 14

made effective July 1, 1937, of all employees receiving less than Five thousand dollars ($5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

RIDER

to Article V, Section 7

4193

WAGES AND CLASSIFICATIONS

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week; and to provide further that all increases provided

4194

under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 15th, 1937.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
By R. H. Tapscott,
President

Attest:
C. M. Breidenbach, Jr.
Assistant Secretary

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
By D. W. Tracy
International President

LOCAL UNION No. B829
Joseph J. Delvac
Wm. J. Eitelbach
E. F. Galschjodt

Board's Exhibit No. 14 4195

ARTICLE VI

Provisions for Sickness, Disability, Superannuation, Retirement, Etc.

8. The Edison Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, 4196
the allowances for jury duty and military duty, and group insurance. The Edison Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Edison Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

ARTICLE VII 4197

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

4198 *Board's Exhibit No. 14*

10. The Edison Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

ARTICLE VIII

Safety

11. The Edison Company shall continue to make
4199 reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Edison Company in accordance with the practice now prevailing in such department.

ARTICLE IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right
4200 to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Edison Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

ARTICLE X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Edison Company and the Brotherhood or its members employed by the Edison Company, as to the

Board's Exhibit No. 14 4201

meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

FIRST: Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

SECOND: Between a member or members of the 4202
grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

THIRD: Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

FOURTH: Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Edison Company; and

4203

FIFTH: In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Edison Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Edison Company may

4204 *Board's Exhibit No. 14*

ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Edison Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent
4205 or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their
4206 department head, as may be required:

FIRST, to attend regularly scheduled meetings of such grievance committee;

SECOND, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

THIRD, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his de-

partment superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

ARTICLE XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided. 4208

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Edison Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked. 4209

ARTICLE XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Edison Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the par-

4210 *Board's Exhibit No. 14*

ties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Edison Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Edison Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and con-
4211 tinuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party because of or during such disagreement.

4212

ARTICLE XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

Board's Exhibit No. 14

421

IN WITNESS WHEREOF, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and the BROTHERHOOD and its LOCAL UNION have executed this agreement the 15th day of June, 1937.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
By R. H. Tapscott,
President

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
By D. W. Tracy
International President

Attest:
C. M. Breidenbach, Jr.
Assistant Secretary

LOCAL UNION NO. B829
Joseph J. Delvac
Wm. J. Eitelbach
E. F. Galschjodt

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421

4216

Board's Exhibit No. 15

LETTER FROM MR. D. W. TRACY TO MR. GANLEY, DATED APRIL 21, 1937

INTERNATIONAL BROTHERHOOD
ELECTRICAL WORKERS
1200 Fifteenth Street, N.W.
Washington, D. C.

April 21, 1937

4217

William P. Ganley
Chairman—General Council
4 Irving Place
Room 1237
New York, N. Y.

Dear Sir:

Confirming the understanding reached at our conference of today, I am advising that I through you invited the employees of the electrical department of the Consolidated Edison Company employed in Manhattan and the Bronx to affiliate with our organization through membership in the International Brotherhood of Electrical Workers, affiliated with the A. F. of L. under the following conditions:

4218

The International Brotherhood of Electrical Workers will issue a charter for a local union to the indicated council group.

It is understood and agreed between yourself and your committee representing your group of employees together with the writer that no change in the present officer or representative personnel of the council will be required by the IBEW—provided such personnel in its

Board's Exhibit No. 15

4219

entirety consists of members of the IBEW in good standing—until December 1937 when the present laws of the council specify an election shall be held.

It is further understood and agreed that policy involved in the present method of representing the employees will not be changed—except that no officer, representative or delegate of the group shall after affiliation with IBEW accept compensation from company management or other agencies of the employer for time consumed in handling council matters or representing members of the group—until December 1937 when present 4220
council policies will be substituted for by the procedures adopted by the employee members of the group consistent with the policies and constitution of the IBEW.

Sincerely,

(Signed) D W TRACY
International President

4221

4222

Respondents' Exhibit No. 2

CERTIFIED COPY OF THE OPINION OF CAFFEY, U.S.D.J., IN ENTERING THE JUDGMENT IN *CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL.* v. *LAMAR HARDY, ET AL.*

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF NEW YORK } ss.:

4223 I, CHARLES WEISER, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the writings annexed to this certificate namely, Opinion filed by Hon. Francis G. Caffey, U. S. District Judge, in the case entitled Consolidated Edison Company of New York, et al vs. Lamar Hardy, U. S. Attorney, et al Equity No. 81-377; have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the
4224 Southern District of New York, this 2d day
(Seal) of June in the year of our Lord one thousand nine hundred and thirty-seven and of the Independence of the United States the One Hundred and Sixty-first.

CHARLES WEISER
Clerk.

Respondents' Exhibit No. 2

[Filed July 31, 1936]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., *et al.*, *Plaintiffs,* against LAMAR HARDY, United States Attorney for the Southern District of New York; ALBERT GOLDMAN, Postmaster for the Boroughs of Manhattan and The Bronx, City of New York; RAYMOND J. MULLIGAN, United States Marshal for the Southern District of New York; LEO J. HICKEY, United States Attorney for the Eastern District of New York; FRANCIS J. SINNOTT, Postmaster for the Borough of Brooklyn, City of New York; ALBERT C. BENNINGER, United States Marshal for the Eastern District of New York; *et al.*, *Defendants.*	In Equity No. 81/377.

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ,
Solicitors for Plaintiffs;
John W. Davis, Esq.,
William L. Ransom, Esq., and
Henry Jaffe, Esq., *of Counsel.*

The bill alleges that the plaintiffs are not subject to the terms of the Public Utility Act of 1935 (Session

4228 *Respondents' Exhibit No. 2*

Laws, 1st Session 74th Congress, chap. 687, p. 803), and that the Act is unconstitutional. The prayer is that enforcement of the statute against the plaintiffs be enjoined; also that a declaratory judgment be entered, pursuant to Section 274 (d) of the Judicial Code (28 U. S. C. A., sec. 400), decreeing the statute unconstitutional.

Decrees *pro confesso* have been taken against five defendants. As to them, the plaintiffs now move for a final decree (in a form annexed to the notice of motion) granting the two kinds of relief asked for in the bill "and
4229 for such further and different relief as may be proper."

When the motion was argued none of the five defendants concerned appeared, either personally or by counsel. A lawyer in the Government service was in the court room at the time. When questioned he replied that he knew nothing of the case, did not desire to be heard and was present merely as an observer, under instructions to report what happened.

Counsel for the plaintiffs, when presenting their side, called attention to *Masterson* v. *Howard,* 18 Wall. 99, and *Thomson* v. *Wooster,* 114 U. S. 104, as having a possible
4230 bearing on the duty of the court. I have had no assistance, however, from counsel for the defendants. In consequence, I have been compelled myself to investigate the matter and to search the authorities. Because I have been engrossed in other court matters having preference, I have had no time earlier to do this.

A decree *pro confesso* admits only well pleaded facts (*Thomson* v. *Wooster, supra*). Confining consideration to those, the concession by the five defendants is not of the conclusions alleged in the bill or of the plaintiffs' claim of right either to an injunction or to a declaratory judgment. The concession is merely that the corporate plaintiffs are engaged exclusively in intra-State business

4231

and do nothing which directly burdens or affects interstate or foreign commerce. These are the pertinent averments of facts well pleaded in the bill (paragraphs 9 to 12, 40, 44 and 47). That being true, I think Section 3 exempts the corporate plaintiffs from the operation of the Act.

It is to be noted that Section 3 deals with the Securities and Exchange Commission. It prescribes duties of that body. It provides that these duties shall be performed by making rules and regulations or by making orders on application. Nevertheless, the legislative direction is peremptory. The Commission is afforded no alternative save to exempt "from any provision or provisions" of the statute all holding companies and their subsidiaries (defined in Section 2) such as, for the purpose of this case, the corporate plaintiffs, through the allegations of the bill and the decrees *pro confesso*, are established to be.

4232

So also, even though the Commission should fail to adopt rules and regulations in conformity with Section 3 or the corporate plaintiffs have refrained from applying to the Commission for exemption from the provisions of the Act, the five defendants here involved would disobey the substantive requirements of the section if they undertook to enforce against the corporate plaintiffs any penalty mentioned in the Act.

4233

So far as concerns the defendants sought to be enjoined, their action need not depend on what the Commission does or does not do (Cf. *United States* v. *Morgan*, 222 U. S. 274). As to them at least, I think it clear that Section 3 can reasonably be interpreted as an expression by Congress itself of the intention that corporations of the conceded type of the plaintiffs should not be brought within the influence or control of the statute. Certainly,

4234 *Respondents' Exhibit No. 2*

as I see it, the language employed in the section is susceptible of that construction. If so, then that meaning must be ascribed to it in order to avoid even a doubt as to constitutionality (*Crowell* v. *Benson*, 285 U. S. 22, 62; *United States* v. *Shreveport Grain & El. Co.*, 286 U. S. 77, 82; *I. C. C.* v. *Oregon-Washington R. R. Co.*, 288 U. S. 14, 40).

If the corporate plaintiffs be exempt from the provisions of the Act, of course the individual plaintiffs are likewise unaffected by those provisions.

4235 It follows that the plaintiffs are entitled to the injunction they have requested. Paragraphs (1), (2) and (3) of decree proposed seem to me appropriate to accomplish the result.

In a brief filed by one not a party to this suit I have been asked to take into account two actions, L.62/244 and E.82/375, pending in this court, between himself and one of the corporate plaintiffs. In effect it is asserted that in those cases, the corporate plaintiff here which is defendant there, at variance with what appears from the bill and the decrees *pro confesso* now under consideration, 4236 contended that it was engaged in interstate commerce. While possibly at a trial evidence that a litigant took a different position in another case would be admissible, yet in the present case I am bound to consider only what is disclosed by the record before me. That consists wholly of what the parties thereto have submitted and the action of the court thereon. It cannot properly include what an outsider seeks to bring in. It would be a complete departure from fundamental principles for a court to take into account what a stranger, even though as an *amicus curiae*, attempts to inject. Every court is "limited to determining rights of persons or of property, which are actually controverted in the particular case before

4237

it" (*California* v. *San Pablo & Tulare R. Co.*, 149 U. S. 308).

It may be added that, contrary to the apparent apprehension of the *amicus curiae*, his law-suits will not be, and cannot be, in the slightest affected or impeded by any decision in the case at bar.

At the oral argument I announced my impression that the plaintiffs were entitled to an injunction. Their counsel then stated, as I understood, that they did not wish an injunction unless it were accompanied by an adjudication of the unconstitutionality of the Act.

4238

It is settled that a court should not hold a statute invalid unless it be obliged to do so (*Blair* v. *United States*, 250 U. S. 273, 279. See also *Ogden* v. *Saunders*, 12 Wheat, 213, 270; *Sinking Fund Cases*, 99 U. S. 700, 718). So too it is settled that a court should not determine abstract questions. It should pass only on real controversies squarely put before it by the parties, as to which, in the phrase of Judge Learned Hand in *Meeker* v. *Baxter*, 83 Fed. (2d) 183, 187, they have "locked horns" (*Ashwarder* v. *Tenn. Valley Authority*, 297 U. S. 288, 324).

4239

Applying the propositions just stated, I feel that there is no occasion, or even excuse, to consider whether the Act is constitutional. Inasmuch as the plaintiffs do not come within its provisions, they are not hurt by it. In so far as they are concerned, injunction against its enforcement affords the plaintiffs all the possible protection they need. They are not entitled to any additional relief.

Moreover, from the facts set out near the beginning of this memorandum as to the inactivity and non-resistance of the five defendants, it seems plain tha there is

4240 *Respondents' Exhibit No. 2*

actually no controversy between them and the plaintiffs as to the constitutionality of the statute. In principle at least, it seems to me that *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249, sustains the conclusion I have reached and I do not read any other case relied on by the plaintiffs as being to the contrary.

The result is that I am unwilling, on the present motion, to award the plaintiffs a decree containing an adjudication of the unconstitutionality of the Act, in the
4241 form of paragraph (4) of the decree proposed by them or in any other form.

Motion for an injunction granted and for a declaratory judgment denied. Settle decree, in accord with the foregoing, on two days' notice. If it be presented while I am out of the district, I consent that it be acted on by the judge then sitting in the motion part.

Dated, July 30, 1936.

FRANCIS G. CAFFEY,
United States District Judge.

4242

4243

Respondents' Exhibit No. 3

NOTICE OF MOTION BY RESPONDENT COMPANIES, WITH AFFIDAVIT, DATED MAY 17, 1937, FOR PRIOR AND SEPARATE HEARING AS TO JURISDICTION AND TO DISMISS COMPLAINT AND CHARGE FOR WANT OF JURISDICTION.

[Printed at page 19, *ante*]

4244

Respondents' Exhibit No. 7

VERIFIED ANSWER ON BEHALF OF THE RESPONDENT COMPANIES TO THE COMPLAINT OF THE BOARD AS AMENDED TO JUNE 14, 1937.

[Printed at page 42, *ante*, as a part of the pleadings]

4245

4246

Respondents' Exhibit No. 15

LETTER OF HARRY J. STRAUB TO MR. EDWARD P. PREZZANO, PRESIDENT OF THE WESTCHESTER LIGHTING COMPANY AND THE BRONX GAS AND ELECTRIC COMPANY.

THE BRONX GAS AND ELECTRIC COMPANY

43 Westchester Square
Bronx, New York City

4247 Mr. E. P. Prezzano, President
Westchester Lighting Co.
9 South First Avenue
Mount Vernon, N. Y.

Dear Mr. Prezzano:

As our association as employer and employee has been terminated due to the merger of the Bronx Gas & Electric Co., into the Consolidated Edison Co., Inc. I would like to express my gratitude and thanks to the members of our former management as represented by Mr. Wilder and yourself, for the cordial and understand-
4248 ing manner in which you have received me as chairman of the General Council of the Employees' Representation Plan of the Bronx Gas & Electric Company in the past year. And may I congratulate the management upon their excellent choice of secretary of the management committee.

There has never been an occasion in which we have contacted Mr. Carroll, in which we did not find him to be anything but a perfect gentlemen. He has always been cordial, kind and considerate and understanding. His excellent advice has at times proven to be a valuable asset to the smooth functioning of our Council.

Respondents' Exhibit No. 15

4249

What has impressed me the most in my association with Mr. Carroll, has been his earnest endeavor to obtain an accurate picture of whatever situation we were discussing, from an employees point of view. The clear and concise manner in which he has explained the managements view point which, of course was the prime factor in enabling us to iron out employees difficulties.

It is my sincere hope that any future management contacts I may make, shall be as pleasant and cordial as those I have enjoyed with yourself, Mr. Wilder and Mr. Carroll.

4250

May I wish you continued good health, happiness and success and assure you, that from a personal viewpoint the unpleasant part of this merger is the termination of our association.

Sincerely yours,

HARRY J. STRAUB

4251

4252

Respondents' Exhibit No. 16

MEMBERSHIP OF LOCAL UNIONS OF THE IBEW HAVING COLLECTIVE BARGAINING AGREEMENTS WITH COMPANIES OF THE CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. GROUP OF COMPANIES.

MEMBERSHIP OF LOCAL UNIONS OF THE I B E W HAVING COLLECTIVE BARGAINING AGREEMENTS WITH COMPANIES OF THE CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., GROUP OF COMPANIES

(Data furnished to the Companies by the I B E W as of June 29, 1937)

4253

Local Union No.	Employees eligible to I B E W membership	Total membership	Per cent of eligibles	Paid-up members	Per cent of eligibles	Cards signed but dues not yet paid	Per cent of eligibles
B-825 (Brooklyn Edison Company, Inc.)	8,100	7,200	89.0	6,150	76.0	1,050	12.9
B-826 (New York Steam Corporation)	970	910	93.7	850	87.7	60	6.1
B-828 (Consolidated Telegraph and Electrical Subway Company)	1,600	1,534	96.1	1,534	96.1	0	0
4254 B-829 (Consolidated Edison Company of New York, Inc.—Electric)	13,200	8,680	65.8	6,018	45.6	2,662	20.2
B-830 (Consolidated Edison Company of New York, Inc.—Gas)	7,000	5,644	80.6	4,144	59.1	150	2.1
B-832 (Westchester Lighting Company)	3,082	2,968	96.3	2,375	77.1	593	19.2
B-839 (New York and Queens Electric Light and Power Company)	4,200	3,537	84.2	2,637	62.7	900	21.4
Totals	38,152	30,473	80.0%	23,708	62.2%	6,765	17.7%

Respondents' Exhibit No. 17 4255

MEMORANDUM OF AGREEMENT BETWEEN CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND ITS LOCAL UNION No. B-830 (GAS EMPLOYEES), DATED JUNE 15, 1937.

Memorandum of Agreement

Between 4256

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and the

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Through Its

LOCAL UNION No. B830

4257

Effective June 15th, 1937

Agreement between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (hereinafter referred to as the "Consolidated Company"), and the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (hereinafter called the "Brotherhood"):

WITNESSETH: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as

4258 *Respondents' Exhibit No. 17*

to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Consolidated Company who are members of the Brotherhood and enable the Consolidated Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory, the parties hereto agree with each other as follows:

ARTICLE I

4259 SCOPE

1. This agreement shall apply to all employees of the Consolidated Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of gas service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

ARTICLE II

NO DISCRIMINATION

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2. The Consolidated Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Consolidated Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Consolidated Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Consolidated Company time or property.

Respondents' Exhibit No. 17 4261

ARTICLE III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of 4262
this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Consolidated Company to be 4263
essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

ARTICLE IV

Vacations

5. Each employee who was in the employ of the Consolidated Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive

two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

RIDER

Correcting Article IV, Section 5

4265 VACATIONS

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 15th, 1937.

{ G. T. P. / D. W. T. / J. A. F. / F. G. B. } { R. H. T. / C. M. B. JR. }

4266

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Consolidated Company, in order to insure orderly operation and adequate and continuous service to the public.

ARTICLE V

WAGES AND CLASSIFICATIONS

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall

be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars ($5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

RIDER

to Article V, Section 7 426

WAGES AND CLASSIFICATIONS

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937. 426

Executed, June 15th, 1937.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
By R. H. Tapscott,
President

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
By D. W. Tracy
International President

Attest:
C. M. Breidenbach, Jr.
Assistant Secretary

LOCAL UNION No. B830
George T. Parker
Joseph A. Fisher
Frederick G. Buchner

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ARTICLE VI

Provisions for Sickness, Disability, Superannuation, Retirement, Etc.

8. The Consolidated Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all
4271 Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Consolidated Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Consolidated Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees), its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

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ARTICLE VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

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10. The Consolidated Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

ARTICLE VIII

Safety

11. The Consolidated Company shall continue to make reasonable provisions for the safety and health of 4274
its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Consolidated Company in accordance with the practice now prevailing in such department.

ARTICLE IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right 4275
to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Consolidated Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

ARTICLE X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Consolidated Company and the Brotherhood or its members employed by the Consolidated Company, as

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to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

FIRST: Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

4277 SECOND: Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

THIRD: Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

FOURTH: Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Consolidated Company; and

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FIFTH: In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Consolidated Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Consolidated Company may

ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Consolidated Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision. 4280

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required: 4281

FIRST, to attend regularly scheduled meetings of such grievance committee;

SECOND, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

THIRD, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his de-

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partment superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

ARTICLE XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he be-
4283 lieves that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Consolidated Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless refer-
4284 ence to a board of arbitrators is invoked.

ARTICLE XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Consolidated Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expira-

4285

tion of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Consolidated Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Consolidated Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

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ARTICLE XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

Respondents' Exhibit No. 17

IN WITNESS WHEREOF, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and the BROTHERHOOD and its LOCAL UNION have executed this agreement the 15th day of June, 1937.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
By R. H. Tapscott,
President

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
By D. W. Tracy
International President

Attest:
C. M. Breidenbach, Jr.
Assistant Secretary

LOCAL UNION No. B830
George T. Parker
Joseph A. Fisher
Frederick G. Buchner

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PAMPHLET ENTITLED "A CALL FOR SPECIAL VOTE BY ALL EMPLOYEES OF THE NEW YORK EDISON COMPANY AND THE UNITED ELECTRIC LIGHT AND POWER COMPANY," TO BE HELD ON NOVEMBER 22, 1933, WITH COPY OF PLAN FOR COLLECTIVE BARGAINING THROUGH EMPLOYEE REPRESENTATION.

CALL FOR A SPECIAL VOTE

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by

ALL EMPLOYEES

of

The New York Edison Company

and

The United Electric Light and Power Company

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To be Held on Wednesday, November 22nd, 1933, between the hours of 6 A. M. and 8 P. M., in the various offices, stations and departments of The Companies

To enable the Employees of The Companies to vote upon Plans for their organization for collective bargaining through representatives of the Employees selected by themselves by secret ballot, etc.

November 13, 1933

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LETTER FROM FRANK W. SMITH, President, to all Employees of The New York Edison Company and The United Electric Light and Power Company with a call for a special vote by the Employees on November 22, 1933 1-8

A PLAN for the organization of the Employees of The Companies for Collective Bargaining Through Representatives Selected by the Employees Who Choose to Participate Therein 9-30

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The New York Edison Company

The United Electric Light and Power Company

OFFICE OF
FRANK W. SMITH,
President.

4298

TO THE EMPLOYEES OF THE NEW YORK EDISON COMPANY AND THE UNITED ELECTRIC LIGHT AND POWER COMPANY:

There have come to my desk petitions signed by a majority of the 15,000 employees of these two Companies, asking, among other things, that the Companies take some steps which will enable the employees to express their views on the subject of collective bargaining through representation of the employees under Section 7(a) of the National Industrial Recovery Act, and that the Companies call some meeting or election at which a vote of the employees can be taken and a suitable plan or plans submitted for the action of the employees themselves.

4299

In order to get the matter promptly under way and to enable our employees to decide freely what they wish to do about such an organization for the representation through representatives whom they select, I have decided to comply with these requests.

Accordingly, such a special election, at which all of the employees of each Company may vote, will take place on Wednesday, No-

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vember 22nd, 1933, between the hours of 6 A. M. and 8 P. M. The voting will be by secret ballot, and any employee may cast his ballot, between those hours, in his own department, station, bureau or location, at polling places which will be more definitely announced on the various bulletin boards of the Companies, and otherwise communicated to you, not later than Monday, November 20th, 1933.

4301

To ensure a free expression of opinion, this vote by the employees of the two Companies will be taken under the following plan and rules:

1. None of the officers of the two Companies, department and bureau heads, or other members of supervisory forces, will be present at or vote or participate in the election, or will in any way coerce, restrain or interfere with the vote to be cast by any employee.

2. The voting shall be by secret ballot, with printed ballots in uniform form, under the usual safeguards which will fully protect

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each employee in casting his ballot freely. Owing to the close inter-relationship of the employees in the operations of the two Companies, a single election will be held by and for the two Companies. Each employee shall be entitled to vote only in his own bureau, station or location, and shall be first identified as an employee entitled to vote therein. A poll list shall be kept of all employees voting in each bureau, station or location.

3. Through this vote by our employees, there ought to be a full and free expression of opin-

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ion by all our employees upon the following basic question:

Shall there be adopted and put in force, by and for the employees of The New York Edison Company and The United Electric Light and Power Company, a plan of organization for collective bargaining through representatives chosen by the employees?

4304

In order to get the matter before the employees in definite form, it is desirable that at this same initial vote, our employees have also an opportunity to express their opinion, through their votes, as to the adoption or non-adoption of such a plan of organization, or as to their choice between such plans as may be submitted for the consideration and vote of the employees.

To indicate to you what might be done by way of such a plan of organization, a plan has been worked out by officers of this Company, in conjunction with various employees who were familiar with the views of their associates in the different departments; and this plan will be one of those submitted for approval or disapproval by the vote of the employees at the special election. A copy of such plan is given to you, along with the notice of this election.

4305

I do not wish any employee to feel any hesitation about opposing or favoring this plan, or about proposing another one. If any fifty of our employees wish to draft and submit a dif-

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ferent or substitute plan for employee organization for collective bargaining, they may submit the same in writing to the Board of Tellers to be constituted for this voting, addressing such Board, Room No. 611, 4 Irving Place, New York City; not later than 12 o'clock noon on Saturday, November 18th, 1933, and such substitute plan will be immediately printed by the Board of Tellers, distributed to the employees in all departments, and placed upon the ballot impartially for the vote of the employees.

4307

No Plan of organization for the choice of representatives by the employees will be put in force unless and until it has been approved and adopted by a majority of the employees taking part therein, by their vote through a secret ballot at an election. If a Plan is thus approved and adopted, it will become operative only as to such employees as voluntarily choose, and indicate their desire, to come in under it and be governed by it; and no employee will be prejudiced or disadvantaged because he comes in under the adopted Plan or stays out of it. The rights of each employee by virtue of Section 7(a) of the National Industrial Recovery Act will be fully preserved, under the operation of whatever Plan, if any, may be adopted by the employees.

4308

It further would be my suggestion that if any Plan be now adopted and put in force by the employees as the result of this initial vote, such Plan should not be regarded as necessarily final, but rather as provisional and sub-

ject to modification, as a whole or in part, by the employees, when sufficient experience has been had to enable the employees to determine whether or not the Plan with which they have made a start could be improved. Once the first vote has taken place and a Plan has been adopted, the calling and holding of future elections and meetings, including the election of the Boards of Tellers for all future Elections, should be in all respects under the control and supervision of the participating employees, through their votes and the action of elected representatives.

4310

4. The following employees of the two Companies, in the indicated departments of the Companies, are hereby constituted a Board of Tellers, to have general charge and supervision of such initial vote and the counting and reporting of the ballots cast, subject to the provisions of this notice:

Edison

W. A. Clark, Draftsman, General Drafting Bureau, (Mechanical Engineering Department)

4311

W. Gillis, Operator, West 39th Street, District Substation No. 2 (Operating Department)

United

F. C. Caldwell, Turbine Room Engineer, Hell Gate Generating Station (Operating Department)

James P. Bullock, Clerk, Shops Bureau (Construction Department)

Edison

J. J. Donohue, Splicer, Bronx Distribution Bureau (Street Department)

P. McHugh, Installer, Meter Bureau (Distribution Engineering Department)

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United

T. F. Mansfield, Clerk, Manhattan Distribution Bureau (Street Department)

J. J. Reid, Dispatcher, Operating Bureau (Distribution Engineering Department)

Edison

T. J. Wright, Instructor, Educational Bureau (Personnel Department)

T. Rooney, Non-Payment Collector, Credit and Collection Bureau (Treasurer's Department)

4313

United

B. T. Sherwood, Clerk, Statistical Bureau (Secretary's Department)

W. A. Finley, Clerk, General Accounting and Disbursements Bureau (Treasurer's Department)

Edison

T. F. Donigan, Clerk, Rate Service Bureau (Commercial Department)

I. Mark, Illuminating Engineer, Lighting Bureau (Commercial Department)

United

W. V. Smith, Adjuster, Consumers' Service Bureau (Commercial Department)

P. R. Westerkamp, District Agent, District Office (Commercial Department)

4314

Edison

Hugh Lynch, Chauffeur, Passenger Car Service Bureau (Transportation Department)

Francis G. Campbell, Clerk, Miscellaneous Supplies Division (Purchasing Department)

United

John F. Maher, Truck Chauffeur, Transmission Bureau (Street Department)

John H. Kelly, Clerk, Clerical Division (Stores Department)

Edison

Maria Cirafici, File Bureau, Bronx Division (Secretary's Department)

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4315

United

Evelyn M. Platner, Typist, Stenographic and Mail Bureau (Secretary's Department)

The Board of Tellers shall choose a Chairman and a Secretary, and are authorized to add to their number and/or to appoint, in their discretion, such representative inspectors of election and tellers, from among the employees (exclusive of officers, department heads, and members of supervisory forces), as in the judgment of the Board of Tellers may be needed, in and for the various bureaus, stations or locations; and to prepare and make available the forms of ballot, and to make and publish to the employees any further rules and regulations which they may deem necessary in order to ensure a fair and secret ballot and an impartial count. The results of the vote of the employees shall be promptly compiled and made public by the Board of Tellers, upon all bulletin boards in the offices and stations of the two Companies.

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5. The Companies will pay the cost of printing and distributing this notice, any proposed plans, and the ballots, together with any incidental expenses of holding this and any future elections; and the Companies will also arrange the time schedule of employees during the hours of balloting, so as to enable them conveniently to vote.

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6. The Companies do not hereby approve, endorse or favor the annexed Plan, or any other Plan, for collective bargaining through

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employee representation, but reserve any and all of their rights and each and every employee is likewise deemed to reserve any and all of his or her rights in respect to this matter.

7. Any further details concerning the voting on November 22nd and the arrangements therefor will be in the hands of the Board of Tellers. We hope that every employee will
4319 take part in the vote and to express freely by his vote his own views as to the matters submitted.

Very truly yours,

FRANK W. SMITH
President.

November 13, 1933.

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PLAN FOR COLLECTIVE BARGAINING THROUGH EMPLOYEE REPRESENTATION

Article I

PURPOSES

This Plan is established to provide means by which Employees of The New York Edison Company and The United Electric Light and Power Company, through representatives of their own choosing, may deal collectively with the Management of the Companies, during the operation of Section 7(a) of the National Industrial Recovery Act, and have a voice through such representatives selected by the Employees, in the consideration of matters of mutual interest to Employees and the Management.

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Collective bargaining under this Plan may relate to wages, hours of labor, working conditions, health, safety, education, recreation, and like matters affecting employment, together with the adjustment of grievances arising out of the relations of Employees with the Management; provided, however, that this Plan and any actions taken hereunder shall not apply to any matter which is under the regulatory power and jurisdiction of any public board or body created by statute or as to which a public duty or obligation is imposed upon the Companies by law as to public utilities.

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Article II

APPLICATION

The Plan shall apply to, and shall be established in, all departments, bureaus, divisions and/or locations, of either or both Companies.

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. The Plan approved and adopted by the vote of the employees shall be available to, and shall apply to, govern and bind, all employees who voluntarily elect and choose to participate therein and become members thereunder, such choice and membership to be evidenced by the written signature of such employees to this Plan or a copy thereof, upon application by such employee to the Secretary of the Bureau Council for the bureau, division or other sub-
4331 division of the department to which such employee is assigned.

Each employee shall be free to choose as to whether he will join and take part and be represented under the Plan; and its adoption and operation by and as to such employees as choose to participate therein shall be wholly without prejudice to the rights of non-participating employees.

Article III

QUALIFICATIONS FOR VOTING AND FOR MEMBERSHIP IN COUNCILS

1. All employees of the Companies who have
4332 been employed by either of the Companies for at least the thirty days last past, shall be entitled to become members and to participate under this Plan, and upon so doing, shall be entitled and permitted to vote in the selection of representatives on the Bureau Council hereinafter created and upon matters presented for decision at general meetings of the employees; provided, that those employees identified with the Management of the Companies, such as officers, department heads, bureau heads, general foremen, and the immediate supervisory assistant of any of them, shall not be permitted to be members or to vote or hold office or in any way participate under this Plan.

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2. Any employee of the Companies who has been employed by the Company continuously during the past twelve months, shall be eligible to serve as representative on a Bureau Council.

3. Any employee elected to a Bureau Council shall be eligible to serve as Chairman of that Bureau Council and/or as representative on the Departmental Council for the department in which he is employed.

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4. No employee shall be required or permitted to pay any dues, membership fee, assessment, or contribution, as a condition of his becoming or remaining a member under this Plan or of participating in any election or meeting hereunder; the purpose being that this Plan shall be available to each employee who chooses to come under it, without financial obligation or payment.

5. Membership and the right to vote and participate under this Plan shall be evidenced by a card issued by the Secretary of the Bureau Council, to employees who have complied with the provisions hereof.

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Article IV

ORGANIZATION

1. THE ESTABLISHMENT OF COUNCILS FOR EMPLOYEE REPRESENTATION

(a) Bureau Council

(i) Each Bureau shall by secret ballot select a number of representatives, who shall constitute a "Bureau Council." For the purposes of this Plan, a Department which

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(a) Bureau Council (continued)

has and contains no Bureau shall be ranked as considered as a Bureau.

(ii) Each Bureau shall select, for its Bureau Council, one representative for each fifty employees.

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(iii) In those Bureaus having less than fifty employees, one representative shall be chosen, who shall function, in Bureau matters, as the Bureau Council.

(iv) The representative selected by any Bureau having less than fifty employees shall not be as such, a member of the Departmental Council; but the General Council shall arrange and publish a method by which the representatives of such Bureaus may meet and choose a joint representative to sit in the Departmental Council, with voting powers as hereinafter provided.

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(b) Departmental Council

The persons elected to serve on the Bureau Council shall select from their number a Chairman, who shall serve as presiding officer at the Bureau Council Meetings and who shall also serve as Bureau representative in a Departmental Council, which shall consist of the Bureau representatives, so chosen, from each Bureau in the Department.

Respondents' Exhibit No. 24 4339

(c) Voting in Departmental Council

In all voting in any Departmental Council, each member thereof shall be entitled to cast one vote for each fifty employees eligible to vote under this Plan and represented by him in such Departmental Council.

(d) General Council

(i) The individuals elected to serve on the Departmental Council shall select from their number a Chairman, who shall serve as presiding officer at the Departmental Council meetings, and who shall also serve as Departmental Representative in a General Council, which shall consist of the Departmental representatives, so chosen, from each Department in the Company. 4340

(ii) In those cases in which a Department has no Bureau, the Chairman of the Bureau Council shall serve as a member of the General Council. 4341

(e) Voting in General Council

In all voting in the General Council, each member thereof shall be entitled to cast one vote for each fifty employees eligible to vote under this Plan and represented by him in such General Council. Those members of the General Council representing less than fifty employees shall have one vote.

15

Respondents' Exhibit No. 24

(f) Departments and Bureaus

The Departments and the Bureaus thereunder, for the purposes of the initial operation of this Plan, are as follows:

AS TO THE NEW YORK EDISON COMPANY:

TREASURER
- General accounting
- Payroll
- Paymaster
- Cashier (Manhattan)
- Credit and collection (Manhattan)
- Consumers accounting (Manhattan)
- Cashier (Bronx)
- Credit and collection (Bronx)
- Consumers accounting (Bronx)

SECRETARY
- Information and messenger
- Mail
- Stenographic
- File

ACCOUNTING
- Disbursements
- Fixed capital

RATE

PERSONNEL
- Educational
- Employees service
- Employees advancement
- Safety engineering

ENGINEER-ACCOUNTING

COMMERCIAL
- Clerical
- Domestic appliance promotion
- District office (Manhattan)
- Lighting (Manhattan)
- Industrial sales (Manhattan)
- District office (Bronx)
- Lighting (Bronx)
- Industrial sales (Bronx)
- Commercial engineering
- Rate service
- Commercial technical
- Consumers service
- Special service

4345

Respondents' Exhibit No. 24

(f) **Departments and Bureaus** (continued)

SYSTEM ENGINEERING
- Inside plant
- System planning

MECHANICAL ENGINEERING
- General drafting

CIVIL ENGINEERING
- Civil engineering

CONSTRUCTION
- Office
- Shops
- Building service
- Electrical construction
- Mechanical construction

4346

OPERATING
- East River station
- Waterside stations
- Test and system operation
- Manhattan substations

STATISTICAL BUREAU

STREET
- Manhattan distribution
- Bronx distribution
- Transmission
- Field inspection

DISTRIBUTION ENGINEERING
- Drafting
- Meter
- Operating
- Plans and records
- Plant
- Service inspection
- Test

4347

CLAIM

INVESTIGATION

PHOTOGRAPHIC BUREAU

PURCHASING

STORES

TRANSPORTATION
- Delivery service
- Motor vehicle maintenance
- Passenger service

Respondents' Exhibit No. 24

(f) Departments and Bureaus (continued)

AS TO THE UNITED ELECTRIC LIGHT AND POWER COMPANY:

CONSTRUCTION
- Building service
- Electrical construction
- Mechanical construction
- Shops

MECHANICAL ENGINEERING

OPERATING
- Engineering
- Hell Gate
- Sherman Creek

COMMERCIAL
- District office
- Domestic appliance promotion
- Industrial sales
- Lighting
- Commercial engineering
- Commercial technical
- Consumers service
- Rate service
- Special service

TREASURER
- Cashier
- Consumers accounting
- Consumers meter
- Credit and collection
- Fixed capital
- General accounting and disbursements
- Paymasters

SECRETARY
- Employees advancement
- File
- Messenger
- Payroll
- Safety
- Statistical
- Stenographic and mail

PURCHASING

STORES

TRANSPORTATION
- Delivery service
- Motor vehicle maintenance
- Passenger service

Respondents' Exhibit No. 24

4351

(f) **Departments and Bureaus** (continued)

DISTRIBUTION COORDINATION
- General service
- Statistical

DISTRIBUTION ENGINEERING
- Drafting
- Meter
- Operating
- Plans and records
- Plant
- Service inspection
- Test

4352

STREET
- Field inspection
- Manhattan distribution
- Transmission

Should there be changes, from time to time, in the organization and/or grouping of the Departments, Bureaus, and Divisions of the Companies, such changes shall be given effect under this Plan, by the General Council, the Departmental Councils, the Bureau Councils, and the various Boards of Tellers.

(g) **Employees not in definite Bureaus**

4353

As to any employees not assigned to and located in particular Bureaus, the General Council shall have the power and duty to provide a Plan under which such unassigned employees may, if they choose, become members, take part, and vote, under this Plan, and choose for themselves a Bureau Council.

(h) **Secretary**

Each Council shall select from among its members a Secretary, who shall perform the duties usual to such office.

4354 *Respondents' Exhibit No. 24*

Article V

SELECTION OF EMPLOYEE REPRESENTATIVES FOR BUREAU COUNCILS

1. NUMBER OF REPRESENTATIVES

The number of persons to be chosen to constitute the Bureau Council for each Bureau shall be determined by dividing the total number of employees in such Bureau by fifty. One representative shall be chosen for each fifty
4355 employees, fractions not to count. A Bureau with less than fifty employees shall in any event choose one representative to constitute its Bureau Council.

2. REPRESENTATION OF DIVISIONS WITHIN A BUREAU

Where there is within a Bureau more than one Division of employees, the nomination and election of representatives to the Bureau Council and the Board of Tellers shall take account of the relative number of employees in each Division as follows: Each Division in such Bureau shall be entitled to have as many representatives, out of the total number to be chosen, as the number of the employees eligible to vote in such
4356 Division bears to the total number of eligible employees in such Bureau, as the same may be determined by the Board of Tellers. The ballots for the nominations and elections in such Bureau shall be arranged by the Board of Tellers so as to give effect to the foregoing, and the nominations and elections shall be made accordingly.

3. EMPLOYEES' REPRESENTATION

Subject to the provisions of the preceding paragraph; each employee in a Bureau who is eligible to participate hereunder shall be permitted and requested to nominate as many persons to represent him and other participating employees on the Bureau Council as it has been determined shall constitute the Bureau Council.

4357

Respondents' Exhibit No. 24

4. NOMINATIONS

From the results of the nominating ballot, a list shall be prepared showing names of the persons nominated in accordance with the provisions of Paragraph 2 of this Article and the number of nominating votes received by each person. From this list, there shall be selected, by the Board of Tellers, in the order of number of votes received by those persons receiving the most votes, such a number of persons as will conform to the requirements of Paragraph 2 hereof and will not exceed twice the number of individuals to be selected to serve on the Bureau Council. For example, if it has been determined that the Bureau Council shall consist of ten representatives, and twenty-five persons have been voted for on the nominating ballot, the first twenty persons on the list from the nominating votes (which has been prepared in the order of number of nominating votes received) shall be considered as having been nominated for the election.

4358

5. NUMBER OF REPRESENTATIVES TO BE VOTED FOR

Upon such completion of the nominating ballot and the publication of the results, each employee eligible to vote hereunder shall be permitted and requested to vote for as many persons among the nominees as it has been determined shall be elected to serve on the Bureau Council.

4359

6. THE ELECTION

From the results of this ballot, a list shall be prepared by the Board of Tellers showing the number of votes received by each person. From this list, there shall be selected (in the order of number of votes received) those persons receiving the most votes, the

4360

number of persons so chosen to equal the number of persons to be elected to serve on the Bureau Council.

Article VI

METHOD OF BALLOTING

1. A SECRET BALLOT

4361

All balloting under this Plan shall be secret, and shall be arranged and supervised by a Board of Tellers, who shall be chosen as provided hereinafter.

2. FORM OF BALLOT

A ballot form, appropriately arranged (printed or otherwise), shall be provided for each employee eligible to vote hereunder. This ballot shall not be signed or ear-marked in any manner which might result in the identification of the employee using it.

3. BALLOT-BOXES, POLLING PLACES AND VOTING

4362

One or more ballot-boxes shall be provided in each Bureau, Division, or at locations, as determined by the Board of Tellers. Each employee shall be permitted to vote only in the Bureau in which he is employed, and upon being identified by the Board of Tellers or its representatives as an employee entitled to vote therein. Facilities shall be provided so that each such employee may receive a blank ballot, mark it as he or she desires, and place it in the ballot-box, all without coercion, interference or influence of any kind or from any source. Each ballot-box shall be sealed, and shall be so constructed that each ballot can readily be deposited in the box but cannot be removed without breaking the seal. The

sealed ballot-box shall not be opened nor the seal broken until the appointed time has arrived for closing the ballot and commencing the counting of the votes under the supervision of the Board of Tellers.

4. COUNTING OF BALLOTS

In the nominating ballot, all votes shall be counted and tabulated. In the election ballot, whereby the representatives are chosen from the list of nominees, votes for persons not listed among the nominees, shall not be counted and shall be declared "void." Other votes, on the same ballot form, shall be counted if they are for persons duly nominated as hereinabove provided.

4364

5. REPORT BY BOARD OF TELLERS

Upon completion of the counting of votes, the Board of Tellers shall prepare and post publicly a detailed report showing the results of the elections.

6. OPENING AND CLOSING OF POLLS

The Board of Tellers shall fix and announce the time for opening and closing the balloting, shall determine a suitable method of informing all employees in a Bureau or Division of the date, time, place, etc., of such balloting, and shall cause such announcement to be suitably published.

4365

7. POWERS AND DUTIES OF BOARD OF TELLERS

As to the conduct and supervision of nominations, elections, and the counting of all ballots, under this Plan, the Board of Tellers shall have, and may exercise, such powers and duties, not inconsistent with the provisions of this Plan, as they may deem necessary or proper for the carrying out of the purposes hereof.

4366

Respondents' Exhibit No. 24

8. FIRST NOMINATIONS AND ELECTIONS UNDER THIS PLAN

The first nominations and elections for members of the Bureau Councils under this Plan shall be held within three weeks from and after the date of the approval and adoption of this Plan by the employees. Subsequent nominations and elections shall be held in each year, at times to be fixed and announced by the Board of Tellers, so that the
4367 annual elections of members of the Bureau Councils shall be held during the second week of the month of November, in each year.

Article VII

TERMS OF OFFICE

1. The Members of the Bureau, Departmental and General Councils shall serve for one year, commencing December first and ending November thirtieth, provided, that each member of a Council shall serve until his successor shall have been duly elected and qualified; and provided further, that the members of the Councils first chosen under this Plan
4368 shall serve only until the election and qualification of their successors, at the next annual election.

2. In the event that a representative on a Bureau Council is incapacitated because of death, leaving the employment, transfer from such Bureau or promotion to a supervisory position, the vacancy shall be filled by vote of the remaining members of the Bureau Council.

3. In the event that a representative on a Departmental Council or General Council shall be incapacitated because of death, leaving the employment, transfer from the Depart-

ment, or promotion to a supervisory position, the vacancy shall be filled by vote of the Bureau or Departmental Council, of which he has been Chairman.

4. Representatives so chosen to fill vacancies in any Council, shall serve until their successor have been duly elected and qualified, as hereinaboye provided.

4370

Article VIII

BOARD OF TELLERS

1. In each Bureau with fifty or more employees, the Board of Tellers therefor shall consist of three employees of that Bureau, who are members under this Plan, and are nominated and elected with reference to any Division within a Bureau, as provided in Paragraph 2 of Article V hereof. The three such employees receiving the highest number of votes therefor shall be deemed elected to serve as such Board of Tellers.

2. The election of members of the Board of Tellers to serve until and for the ensuing election shall be conducted by secret ballot, at each election. Each Bureau employee participating under this Plan shall be entitled to vote for three persons as such Board of Tellers. Nominations shall first be made in the manner provided as to members of the Bureau Council.

4371

3. The Board of Tellers in each Bureau shall elect from their number one who shall serve as Chairman and one from their number who shall serve as Secretary.

4. The ballots cast and the tally sheets at any election shall be preserved by the General

4372

Respondents' Exhibit No. 24

Council for at least one year following such election.

5. All communications and matters that may be issued by any Council or any Board of Tellers to the participating employees, pertaining to the operation of the Plan and/or nominations or elections thereunder, shall be sent to such employees at their home addresses as listed under this Plan. All elections, meetings and proceedings under this
4373 Plan shall be so conducted, so far as practicable, as to involve a minimum of interruption and interference with the work of employees during normal working hours, except that time shall be allowed to employees for balloting and the conduct of elections.

Article IX

POWERS AND DUTIES OF COUNCILS

1. BUREAU COUNCIL

(a) To consider, study, investigate and discuss matters pertaining to relations between the Management and the employees
4374 participating under this Plan, such as adjustment of wages, hours, working conditions, overtime, vacations, and other matters within the stated purposes of this Plan.

(b) To consider, negotiate and agree upon, with the Management, such changes in these matters as in their opinion are necessary or desirable. The Bureau Council shall have exclusive authority to negotiate and agree upon any such matters specifically relating to its Bureau. Matters which fall outside the scope of the Bureau shall be referred to the Departmental Council or to the General Council.

Respondents' Exhibit No. 24

4375

2. DEPARTMENTAL COUNCIL

(a) To consider, negotiate and agree upon such matters as may be referred to it by any Bureau Council, or as may arise elsewhere and are beyond the Bureau scope and within the Departmental scope.

3. GENERAL COUNCIL

(a) To consider, negotiate and agree upon such matters as may be referred to it by any Departmental Council, or which 4376
may arise elsewhere and which are obviously beyond the Departmental scope.

(b) The Chairman of the General Council shall preside at all meetings of employees hereunder, and shall be *ex officio* the chief executive under this Plan; and through him the General Council shall exercise general supervision of the administration of the Plan, and shall determine any disputed questions concerning the conduct of elections hereunder, if referred to the General Council by the Board of Tellers of any Bureau.

4. A majority of the members of a Council and of the votes which members are entitled to cast in such Council, shall 4377
constitute a quorum for any meeting of any Council.

5. The decision of a Bureau, Departmental or General Council may be overruled only by a contrary vote of a majority of all participating employees of the Bureau, Department, or Company, as the case may be. Such appeal from the rulings of a Council shall necessitate the calling of a meeting of all the participating employees of that Bureau or Department or of the Companies, as hereinafter provided.

4378

Respondents' Exhibit No. 24

6. The Bureau, Departmental, and General Councils shall confer and negotiate directly with the Management as occasion may from time to time arise. Any employee participating under this Plan may complain to the appropriate Council as to any matter within its jurisdiction under this Plan.

7. Collective bargaining with the Management under this Plan shall be subject to the provisions of any Code approved and adopted by Federal authority as to the Companies, as to minimum wages, maximum hours, working conditions, and the like.

4379

8. The reasonable and necessary expenses of all elections and meetings under this Plan shall be transmitted to the Chairman of the General Council, and by him certified to the Management for payment.

Article X

MEETINGS OF EMPLOYEES

1. A meeting of all of the participating employees of the Companies may be called by the General Council if it deems such meeting desirable.

4380

2. A meeting of all of the participating employees of the Companies shall be called by the General Council upon presentation to the General Council of a petition requesting that the meeting be called. This petition shall state fully the business to be brought before the meeting and shall be signed by at least fifty active employees participating under this Plan.

3. A meeting of all of the participating employees of a Department may be called by the Departmental Council.

Respondents' Exhibit No. 24 4381

4. A meeting of all of the participating employees of a Department shall be called by the Departmental Council, upon presentation to the Departmental Council of a petition requesting that the meeting be called. The petition shall state fully the business to be brought before the meeting, and shall be signed by at least five per cent. of the total membership of the participating employees in the Department.

5. A meeting of all of the participating employees of a Bureau may be called by the Bureau Council. 4382

6. A meeting of all of the participating employees of a Bureau shall be called by the Bureau Council upon presentation to the Bureau Council of a petition requesting that the meeting be called. The petition shall state fully the business to be brought before the meeting, and shall be signed by at least five per cent. of the total membership of the participating employees in the Bureau.

7. All voting, at these meetings of all participating employees of a Bureau or Department or of the Companies, shall be by open ballot unless a secret ballot is requested. The request for a secret ballot shall be presented as a motion, which must be seconded and passed by a majority of those present. The vote on this motion shall be taken by show of hands. 4383

Article XI

AMENDMENT OF THIS PLAN

This Plan or any part thereof may be at any time amended by a majority vote of all of the employees participating hereunder, at any an-

4384 *Respondents' Exhibit No. 24*

nual election under this Plan. Any proposal for amendment of this Plan, to be voted on at such election, must have been filed in writing with the General Council, at least six weeks before such election, and over the signatures of not less than one hundred employees who are participating under this Plan. The General Council and the various Boards of Tellers shall cause such proposed amendment, with the names of the proposers, to be printed, posted
4385 on bulletin boards, and distributed to the participating members hereunder, not less than thirty days before such annual election.

Article XII

TAKING EFFECT OF THIS PLAN

1. This Plan shall be deemed to have been approved and adopted by the employees, and to take effect, if it receives the affirmative vote of a majority of all the employees taking part in the special election called to vote hereupon. If so adopted, this Plan shall be known as "The Employees' Plan for Collective Bargaining Through Employee Representation."

4386 2. This Plan shall, upon and after such approval and adoption, be deemed to be operative and in effect as to such employees of either Company as shall thereafter subscribe his name to this Plan, as evidence of his desire to become a member and to participate hereunder. Any employee who shall have become a member by subscribing to this Plan shall cease to be a member upon ceasing to be an employee of either Company, and may voluntarily cease to be a member participating hereunder, upon giving thirty days' notice of such intention in writing to his Bureau Council.

4387

Respondents' Exhibit No. 25

LETTER DATED JUNE 28, 1937, TO THE BOARD FROM COUNSEL FOR THE RESPONDENTS

WHITMAN, RANSOM, COULSON & GOETZ
40 WALL STREET, NEW YORK

CHARLES S. WHITMAN
WILLIAM L. RANSOM
ROBERT E. COULSON
JACOB H. GOETZ
COLLEY E. WILLIAMS
WILLIAM G. CHAMBERS
RICHARD JOYCE SMITH

June 28, 1937. 4388

Re Complaint of Regional Director for Second Region of National Labor Relations Board v. *Consolidated Edison Company of New York, Inc., et al. (Case No. II C-224)*

National Labor Relations Board,
Washington, D. C.

Gentlemen:

By permission of the Trial Examiner in this proceeding (Mr. Robert Gates), we write to place before you its present status. 4389

The hearings were begun on June 3rd. Testimony in behalf of the Board was concluded on Thursday, June 24th. This termination was unexpected by the respondents and their counsel; a considerable number of witnesses whose attendance had been subpoenaed or asked, were not called to the stand. The proceeding involves, as we understand it:

(1) The question of the jurisdiction of the National Labor Relations Board over these local public utility operating Companies and the matters com-

4390 *Respondents' Exhibit No. 25*

plained of, as against the New York State Labor Relations Board (Laws of 1937, Chapter 443);

(2) The laying off or discharge of six employees, allegedly for activities in labor organizations;

(3) Alleged coercion of some employees into joining the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor; many more than a majority of the employees of each respondent having joined a Local
4391 Union of the International Brotherhood of Electrical Workers, and each of the respondents having entered into and executed a labor agreement with the appropriate Local Union of the International Brotherhood of Electrical Workers; and

(4) Alleged "domination" and financial aid and support of the International Brotherhood of Electrical Workers or some of its Local Unions, by the respondents or some of them.

When the testimony in support of the complaint unexpectedly ended, trial counsel for the respondents asked
4392 the Trial Examiner, upon the record, for an adjournment of the hearings until July 6th, to enable the adequate preparation and presentation of the respondents' case. This was urged as warranted, not only by the public importance of the jurisdictional question, the considerable size of the stenographic record (1301 pages), and the fact that many days of hearings had been obviated by time-saving cooperation between Regional Counsel for the Board and trial counsel for the respondents, but also in view of the situation of the respondents as to necessary witnesses.

Mr. Floyd L. Carlisle, Chairman of the Board of the Consolidated Edison Company of New York, Inc., who

4393

had been in charge of the labor negotiations and policies of the respondents, and whose statements to the employees had been referred to by practically every witness called by the Government, was and is in Europe, due to return to the United States on July 5th. Mr. Carlisle had not gone to France on a vacation or holiday, but to attend a meeting of the Executive Committee of the World Power Conference, of which he is a member, along with Mr. O. C. Merrill, Secretary of the Federal Power Commission, who is also secretary, we believe, of the World Power Conference. In 1936, the World 4394
Power Conference met in Washington, upon the invitation of the United States Government; and Mr. Carlisle and the respondents cooperated in the meeting and the entertainment of the delegates to the Conference from other lands. At the time Mr. Carlisle sailed, there seemed to be no prospect that the pending case would be concluded before his return.

Furthermore, Mr. Harold Dean, vice-president of the respondent New York and Queens Electric Light and Power Company and in charge of its engineering department, was in Milwaukee, Wisconsin, last week, to attend the annual meeting of the American Institute of Elec- 4395
trical Engineers, with which he is identified. Mr. Dean was and is the necessary witness for the respondent New York and Queens Electric Light and Power Company, as to the alleged discharge of five of the six employees alleged to have been let out for labor activities, in 1935 and early 1936. Mr. Dean's presence in New York could not possibly have been secured last Thursday or Friday. At the time he left for Milwaukee, counsel for the respondents had no reason whatever to anticipate that the case would be concluded before his return, as proved to be the case. His testimony was and is indispensable to the respondents' case.

4396. *Respondents' Exhibit No. 25*

After telephonic consultation with representatives of your Board in Washington, the Trial Examiner reported that he could not grant an adjournment for receiving the testimony of any witness except Mr. Carlisle. He recessed the hearing until July 6th for that sole purpose. He reserved decision until July 6th on the question whether or not the testimony of Mr. Dean or any other witnesses (beside Mr. Carlisle) would be taken on July 6th or any other adjourned date. The Trial Examiner granted permission to respondents' counsel to present
4397 the matter meanwhile to your Board.

As the matter stands, the respondents may be denied all opportunity to present testimony in relation to the six alleged discharges of employees, as well as other pertinent matters in rebuttal, and will be limited to the testimony of Mr. Carlisle, who cannot testify upon the factual matters to be covered by Mr. Dean and others.

We respectfully submit that the situation does not warrant such a precluding of the respondents from a fair and full opportunity to present their case, in rebuttal to that presented by the Board in 1301 pages of testimony. Particularly is that so, in view of the fact
4398 that the question whether your Board has jurisdiction in the premises is as yet wholly undetermined. The respondents and their counsel have cooperated fully in the development and presentation of facts which may be pertinent to your Board's final decision. The respondents' opportunity to present their case ought not to be denied.

Very truly yours,

WHITMAN, RANSOM, COULSON & GOETZ
Attorneys for the respondents

Respondents' Exhibit No. 25(a) 4399

REPLY, DATED JULY 2, 1937, OF THE BOARD TO THE LETTER OF JUNE 28, 1937 (RESPONDENTS' EXHIBIT No. 25).

NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D. C.

July 2, 1937

J. WARREN MADDEN
Chairman 4400

EDWIN S. SMITH
DONALD WAKEFIELD SMITH

Whitman, Ransom, Coulson & Goetz
40 Wall Street
New York, N. Y.

Re: Consolidated Edison Co.
Case No. II-C-224

Gentlemen:

We acknowledge receipt of your letter of June 28 requesting permission to introduce testimony in addition to that to be given by Mr. Carlisle on July 6. The Board has considered your request, and directed me to inform you that it will permit Mr. Harold Dean to testify on July 6, as well as Mr. Carlisle, but that these are the only two witnesses who will be permitted to testify on your behalf at that time. The Board is of the opinion that any other witnesses whom you may have desired to produce should have been produced upon completion of the Board's case. 4401

Very truly yours,

(signed) BENEDICT WOLF
BENEDICT WOLF,
Secretary

4402

Stipulation as to Printing of Exhibits

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, BROOKLYN EDISON COMPANY, INC., NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY, *Petitioners,* v. NATIONAL LABOR RELATIONS BOARD, *Respondent.*	October Term, 1937

4403

STIPULATION

4404

It is hereby stipulated and agreed by and between the attorneys for the above-named parties that in printing the record in the above case none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

1. Documents included in Board's Exhibit 1, as follows: Charge, Complaint and Notice of Hearing, Acknowledgments of Service, Amended Notice of Hearing and Affidavit of Service of Amended Notice of Hearing.

2. Board's Exhibits 2, 4, 5, 10, 12, 13a, 13b, 14 and 15.

Stipulation as to Printing of Exhibits 4405

3. Petitioners' (Respondents' in the proceeding before the Board) Exhibits 2, 3, 7, and 15.

It is further stipulated and agreed that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

Dated at Washington, D. C. this 7th day of December, 4406
1937.

CHARLES FAHY
CHARLES FAHY, *General Counsel,*
National Labor Relations Board,
Washington, D. C.

Dated at New York City, this 8th day of December, 1937.

WHITMAN, RANSOM, COULSON & GOETZ
WHITMAN, RANSOM, COULSON & GOETZ,
Attorneys for Petitioners, 4407
New York City.

4408

Order as to Printing of Exhibits

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, BROOKLYN EDISON COMPANY, INC., NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY, *Petitioners,* v. NATIONAL LABOR RELATIONS BOARD, *Respondent.*	October Term, 1937

4409

4410

ORDER

Upon stipulation of the parties, and due consideration having been given, it is

ORDERED that in printing the record in the above case none of the exhibits introduced at the hearing before the board shall be printed except as follows:

1. Documents included in Board's Exhibit 1, as follows: Charge, Complaint and Notice of Hearing, Acknowledgments of Service, Amended Notice of Hearing and Affidavit of Service of Amended Notice of Hearing.

Order as to Printing of Exhibits

4411

2. Board's Exhibits 2, 4, 5, 10, 12, 13a, 13b, 14, and 15.

3. Petitioners' (Respondents' in the proceeding before the Board) Exhibits 2, 3, 7, and 15.

AND IT IS FURTHER ORDERED that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

4412

Dated: New York City, December 9th, 1937.

For the Court

MANTON

United States Circuit Judge.

4413

CLERK'S COPY.

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 19

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ITS AFFILIATED COMPANIES, ET AL., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD ET AL.

No. 25

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, ET AL., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED { APRIL 2, 1938. APRIL 12, 1938.

CERTIORARI GRANTED MAY 16, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., BROOKLYN EDISON COMPANY, INC., ET AL., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

VOL. IV

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 22, 1938.

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and Its Affiliated Companies, Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, Petitioners,

against

NATIONAL LABOR RELATIONS BOARD, Respondent

PETITION FOR REVIEW—Filed November 18, 1937

To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The petition of the above-named Companies, pursuant to Section 10(f) and related Sections of the National Labor Relations Act, respectfully shows, upon information and belief, as follows:

1. The petitioners Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company, are operating public utility corporations, organized and existing under special or general laws of the State of New York, and are engaged in the local business of supplying electric service to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and part of the Borough of Queens, within the City of New York. The petitioner Consolidated Edison Company of New York, Inc., is engaged also in the local business of supplying gas service to consumers situated in the Boroughs of Manhattan, The Bronx, and part of the Borough of Queens (Long Island City and the Third Ward—Flushing, etc.), within the City of New York. The petitioner Consolidated Edison Company of New York, Inc., conducts the electric business formerly con-

ducted by The New York Edison Company, Inc. (including that of the latter's predecessors, The New York Edison Company and The United Electric Light and Power Company) and by the Bronx Gas and Electric Company, merged into the Consolidated Edison Company of New York, Inc., in 1936; also the gas business formerly conducted by it under the name of the Consolidated Gas Company of New York and that formerly conducted by various gas Companies in the Boroughs of Manhattan and The Bronx and part of the Borough of Queens, merged into the Consolidated Edison Company of New York, Inc., in 1936. Whenever in this petition facts or figures are given as to the Consolidated Edison Company of New York, Inc., the same include, unless otherwise indicated, the pertinent facts and figures as to such predecessor Companies within the period stated to be covered. None of the petitioners supplies any kind of service in the Borough of Richmond or in the Fifth Ward of the Borough of Queens (the Rockaway region); and none of the petitioners supplies gas service in the Borough of Brooklyn or in any part of the Borough of Queens except Long Island City and the Third Ward (Flushing, etc.).

2. The petitioner New York Steam Corporation is an operating public utility corporation, organized and existing under the laws of the State of New York, and is engaged in the local business of supplying steam service to consumers situated within a part of the Borough of Manhattan. The petitioner Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York, and is engaged in constructing, maintaining and operating, under contracts with the City of New York, underground ducts or conduits for electrical conductors, within the Boroughs of Manhattan and The Bronx, New York City, but does not supply electric, gas or steam service to any consumers.

3. The petitioner Westchester Lighting Company is an operating public utility corporation, organized and existing under the laws of the State of New York, and is engaged in the local business of supplying electric service to consumers situated in the major part (all except the City of Yonkers and the Towns of Somers, North Salem, Lewisboro and Poundridge) of the County of Westchester, State of New York; and the petitioner Westchester Lighting Company supplies also gas service to consumers situated

in such major part of the County of Westchester as receives gas service. The petitioner Westchester Lighting Company also supplies electric service to consumers situated within a small area in the Borough of The Bronx, in the City of New York, adjacent to Westchester County and formerly a part of that County. The petitioner The Yonkers Electric Light and Power Company is an operating public utility corporation, organized and existing under the laws of the State of New York, and is engaged in the local business of supplying electric service to consumers situated in the City of Yonkers, Westchester County.

Corporate Organization and Local Franchises

4. Each of the petitioners (except the Consolidated Telegraph and Electrical Subway Company) is a corporation organized and existing under general or special laws of the State of New York for the purpose, and is subject to the public duty, of supplying electric, gas or steam service, to local consumers situated within their respective franchise territories as above stated. In addition to the general corporate powers of the petitioners, they possess, and conduct their operations by virtue of, various local franchises to lay, maintain and operate mains, pipes, wires or other conductors for conducting gas, electricity or steam, in, on, over, under and through the streets, avenues and other public places within the City of New York and in various cities, villages and towns in Westchester County, subject to the terms of such local franchises and to such reasonable regulations as the local municipal authorities may prescribe. These franchises were granted in some instances by special legislative Acts of the State of New York, and in other instances by consents of the local municipal authorities in the State of New York.

5. Excepting the petitioner Consolidated Telegraph and Electrical Subway Company, each of the petitioners is "a public utility company" as defined in Section 2, subdivision 22, of the Public Service Law of the State of New York, and is subject to the jurisdiction and regulatory powers of the Public Service Commission of the State of New York as to its operations, properties, rates, revenues, expenditures, accounts, and other respects provided by law. The public obligation of such petitioners is to render adequate and continuous service, at rates limited by such regulation, to

consumers situated in their respective territories in the City of New York and Westchester County. The petitioner Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York. Although affiliated with the Consolidated Edison Company of New York, Inc., through the latter's ownership of its stock, it is not a public utility, within the meaning of the Public Service Law of the State of New York, and does not produce or supply electricity, gas or steam, or sell any product to anybody. Under a contract dated April 7, 1887, modifying a prior contract dated July 22, 1886, with the Commissioners of Electrical Subways for the City of New York, ratified and confirmed by and subject to express legislative enactment (Chapter 716, Laws 1887), as modified by a contract dated May 15, 1891, authorized by Chapter 231, Laws 1891, the Consolidated Telegraph and Electrical Subway Company provides, constructs, equips, maintains and operates subways, ducts, and conduits for the reception of electrical conductors (other than telegraph and telephone conductors) in the Boroughs of Manhattan and The Bronx, City of New York, within which its operations are wholly conducted. The Consolidated Edison Company of New York, Inc., and the Westchester Lighting Company, occupy space in such ducts and pay rent for the space so occupied.

Principal and Branch Offices of Petitioners

6. The principal office of the petitioner Consolidated Edison Company of New York, Inc., is at No. 4 Irving Place, Borough of Manhattan, New York City. Branch offices are maintained and operated by the Company at various locations within the Boroughs of Manhattan, The Bronx, and Queens, within New York City.

7. The principal office of the petitioner Brooklyn Edison Company, Inc., is at No. 380 Pearl Street, Borough of Brooklyn, New York City. Branch commercial offices are maintained and operated by the Company at various locations within the Borough of Brooklyn, New York City.

8. The principal office of the petitioner New York and Queens Electric Light and Power Company is at No. 28-19 Bridge Plaza North, in Long Island City, Borough of Queens, New York City. Branch commercial offices are maintained

and operated by the Company at various locations within the Borough of Queens, New York City.

9. The principal office of the petitioner Westchester Lighting Company and the petitioner The Yonkers Electric Light and Power Company is at No. 9 South First Avenue, in the City of Mt. Vernon, in Westchester County, in the State of New York. A branch commercial office is maintained by these Companies in the City of Yonkers, in Westchester County, State of New York. Branch commercial offices are maintained by the petitioner Westchester Lighting Company at the various locations in Westchester County, State of New York.

10. The principal office of the petitioner New York Steam Corporation is at No. 130 East 15th Street, Borough of Manhattan, New York City.

11. The principal office of the petitioner Consolidated Telegraph and Electrical Subway Company is at No. 54 Lafayette Street, Borough of Manhattan, New York City.

Location of Electric Generating Stations, Sub-stations, Gas Plants and Other Properties and Operations of Petitioners

12. The electric generating stations, electric sub-stations, gas manufacturing stations, gas holder-stations, steam generating plants, service buildings, store-rooms, garages, and other buildings and properties, of the several petitioners, are located wholly within the City of New York or in Westchester County.

13. All transmission and distribution facilities and equipment and all other property owned by the petitioners and used in their electric, gas or steam business are located and used by the petitioners within the City of New York or the County of Westchester. All meters in use by any of the petitioners are located, and are read, on the premises of consumers, situated within the City of New York or the County of Westchester; and the preparation and sending of bills to consumers take place within the City of New York or the County of Westchester. All metering apparatus and equipment furnished by the petitioners are located on premises of customers within the City of New York or the County of Westchester. All deliveries of electricity, gas

or steam by the petitioners are made within the City of New York or the County of Westchester. None of the petitioners undertakes, or has any contract or agreement, to supply, deliver or transmit electric energy at any location outside of the State of New York, or to supply or deliver electric energy for resale by customers outside of the State of New York. None of the petitioners has any interconnection with any public utility company operating outside the State of New York.

Regulatory Requirements of the State of New York

14. Under the Public Service Law of the State of New York (Sec. 66, subdivision 12), the Public Service Commission is empowered to require electric corporations and gas corporation subject to its jurisdiction to file, print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such electric corporations or gas corporations; and the Public Service Commission has by Order and regulations required the petitioners which are subject to its jurisdiction to file with the Commission Rate Schedules embodying Service Classifications and rates, terms, and forms of contracts applicable thereto, for all general consumers, and to file with the Commission copies of special contracts with such consumers of the petitioners as are public utilities, from which requirements are excepted rates and contracts with Federal, State and municipal authorities. The petitioners subject to the jurisdiction of the Public Service Commission have accordingly filed and printed, and have kept and do keep open to public inspection, such Rate Schedules applicable to service to general consumers and have also filed copies of special contracts made with public utilities. Under the Public Service Law of the State of New York, the Public Service Commission has also empowered each petitioner (other than the Consolidated Telegraph and Electrical Subway Company) to give safe and adequate service to local consumers, to control any transfer of their franchises and property, to regulate the issuance of their securities and to regulate their accounts and operations in respects provided by the State law.

Locality and Classes of Electric and Gas Consumers

15. The consumers of the electric service supplied by the petitioners, as of December, 1936, numbered about 2,324,800, of whom about 2,160,300 are located in New York City and 164,500 are located in Westchester County. Wherever in this petition, figures are given as to the number of consumers of the service of any of the petitioners, such number of consumers is based upon the number of bills rendered for such service in the month of December, 1936. By classifications the electric consumers of the petitioners in New York City are:

Type of service	Number of consumers	Per cent of consumers
Residential	1,763,318	81.63
General uses, including commercial	366,549	16.97
Religious purposes	3,985	0.18
Wholesale and other uses	23,328	1.08
Flat rate—general consumers	2,821	0.13
Railroads	16	.....
Municipal street lighting	6	.....
Miscellaneous governmental uses	268	0.01
Total	2,160,291	100.00

By classifications, the electric consumers of the petitioners in Westchester County, as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
Residential	133,516	81.14
General uses, including commercial	23,173	14.08
Religious purposes	815	0.50
Wholesale and other uses	6,382	3.88
Flat rate—general consumers	53	0.03
Railroads	6	.....
Municipal street lighting	160	0.10
Miscellaneous governmental uses	440	0.27
Total	164,545	100.00

By classifications, the gas consumers, served by the petitioner Consolidated Edison Company of New York, Inc., in New York City, as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
General uses, principally residential	1,025,495	99.16
Wholesale service	5,579	0.54
Heating service and other service	3,121	0.30
Prepayment meter sales	30	.....
Total	1,034,225	100.00

By classifications, the gas consumers served by the petitioner Westchester Lighting Company (in Westchester County), as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
General uses, principally residential	128,575	97.79
Wholesale service	149	0.11
Heating service and other service	2,764	2.10
Prepayment meter sales	2	.....
Total	131,490	100.00

The consumers of the petitioner New York Steam Corporation are all situated in parts of the Borough of Manhattan, New York City. The petitioner Consolidated Telegraph and Electrical Subway Company has no consumers of service, but performs contractual obligations with the City of New York, within the Borough of Manhattan and a part of the Borough of The Bronx, New York City.

Employees of the Petitioners

16. For the carrying on of their business within the City of New York and Westchester County, the petitioners have a large number of employees. As of April 17, 1937, the number of employees of the petitioners was, by Companies:

	Number of Employees		
	Weekly	Monthly	Total
Consolidated Edison Company of New York, Inc.	22,227	1,328	23,555
Brooklyn Edison Company, Inc.	7,855	431	8,286
New York and Queens Electric Light and Power Company	4,092	203	4,295
Westchester Lighting Company	2,701	128	2,829

Type of service	Number of consumers	Per cent of consumers	
The Yonkers Electric Light and Power Company	384	34	418
New York Steam Corporation	999	71	1,070
Consolidated Telegraph and Electrical Subway Company	1,618	30	1,648
Total employees	39,876	2,225	42,101

By principal classifications or types of work, the number of employees of the petitioners was:

Classification	Number of Employees		
	Weekly	Monthly	Total
Outside field employees	11,020	263	11,283
Electric generating stations, substations and gas plant employees (exclusive of clerical and office employees at stations)	7,470	445	7,915
Clerical and office employees including meter readers and collectors	21,386	1,517	22,903
Total employees	39,876	2,225	42,101

The employees above indicated as at stations of the petitioners may be further indicated as follows (exclusive of station construction and shop employees):

	Number of Employees		
	Weekly	Monthly	Total
Electric stations	3,700	268	3,968
Gas plants and holder stations	1,897	60	1,957
Steam stations	408	15	423
Total	6,005	343	6,348

The clerical and office employees (exclusive of building service employees) of the petitioners are further indicated in the following groups:

	Number of Employees		
	Weekly	Monthly	Total
Meter readers	895	2	897
Collectors	1,132	...	1,132
Commercial relations department employees (excluding meter readers and collectors)	5,884	176	6,060
Sales department employees	1,985	216	2,201
Controller's and auditing department employees	1,261	155	1,416
Other clerical and office employees	8,431	950	9,381
Total	19,588	1,499	21,087

Annual Payrolls of Petitioners

17. The total annual payrolls of the petitioners (including predecessor Companies within the period), for the years 1935 and 1936, including retirement annuities and separation allowances paid, were as follows:

Company	Year 1935	Year 1936
Consolidated Edison Company of New York, Inc.	$13,696,645.73	$15,759,234.25
The Astoria Light, Heat and Power Company	1,812,556.89	641,555.58[1]
New Amsterdam Gas Company (Including The East River Gas Company of Long Island City)	547,538.51	497,576.23[3]
Central Union Gas Company	371,666.68	380,267.33[3]
Northern Union Gas Company	873,616.01	880,660.61[3]
The Standard Gas Light Company of the City of New York	35,421.72	9,702.78[1]
New York and Queens Gas Company	360,096.76	136,677.23[1]
The New York Edison Company, Inc.	28,244,977.47	28,013,579.89[2]
Brooklyn Edison Company Inc.	16,207,835.40	16,375,685.03

Company	Year 1935	Year 1936
New York and Queens Electric Light and Power Company	7,906,398.81	7,939,416.87
The Yonkers Electric Light and Power Company	829,745.43	789,909.38
Consolidated Telegraph and Electrical Subway Company	2,650,055.35	2,274,733.50
The Brush Electric Illuminating Company	1,156.24	1,187.93[2]
Bronx Gas and Electric Company	820,630.54	878,444.67[3]
Westchester Lighting Company	5,011,803.03	5,221,244.01
New York Steam Corporation	2,093,928.09	2,092,115.11
Total	$81,464,072.66	$81,891,990.40

Collective Bargaining by Petitioners' Employees.

18. Subsequent to the enactment of the National Industrial Recovery Act in 1933, the petitioners complied in good faith with Section 7(a) thereof as embodied in The President's Re-employment Agreement and in proposed Codes for the gas, electric and steam utility industries, pursuant to which their employees had the right to bargain collectively through "representatives of their own choosing"; and the petitioners freely allowed their employees to establish an electoral system whereby the employees elected by secret ballot their free choice of representatives for collective bargaining with the petitioners as employers. Under the electoral system thereby established by the almost unanimous

[1] Five months ended May 31, 1936; merged into the Consolidated Edison Company of New York, Inc., on June 1, 1936.

[2] Eleven months and 22 days ended December 22, 1936; merged into the Consolidated Edison Company of New York, Inc., on December 22, 1936.

[3] Eleven months and 23 days ended December 23, 1936; merged into Consolidated Edison Company of New York, Inc., on December 23, 193

vote of the petitioners' employees, the members of any labor organization might and did become candidates, along with non-members of any labor organization, for election by the employees by secret ballot, as the representatives chosen by the employees for collective bargaining with the petitioners as employers. Collective bargaining through such elected representatives of the employees took place until the end of April, 1937; and the petitioners in good faith defrayed, as a part of the costs of operating their business under modern conditions, such costs and expenses of the operation of such electoral system as were certified to it as actual and reasonable by the elected representatives of their employees. This electoral and representation plan was believed by the petitioners to be in no respect a "company union"; in any event, it fulfilled the voted wishes of the employees, and would have complied with the requirements of Section 7(a) of the National Industrial Recovery Act, had the same been embodied in an effective Code, which did not take place.

19. When the enactment of a State Labor Relations Act became in prospect, whereby the concept would be changed from that of collective bargaining for the employees by elected "representatives of their own choosing" to their representation either by individuals or by a labor organization of the employees' own choosing, and it would become contrary to the spirit or letter of the collective bargaining concept for the employers to contribute to the cost of maintaining and operating the electoral system for the choice of representatives, the petitioners notified the elected representatives of their employees that the petitioners would not continue their financial support of the representation plan established by vote of the employees and would conform to the policy of the State law as to the representation of employees. It was the undisputed admission of witnesses for the National Labor Relations Board at subsequent hearings before that Board (confirmed by a stenographic transcript of such remarks) that, at the time of such notification to the employees, the principal executive officer of the petitioners stated, on April 22, 1937, to a large meeting of the employees and their elected representatives, to be carried back to the rank and file of employees:

"You go out and do what you want, but so far as the management is concerned it cannot and will not pay any money for that purpose [maintenance of an independent union by the employees]. * * * You are to do as you please. We are not taking the position that you must do this or you cannot do this. You have to make the choice."

20. The petitioners or some of them had been in contractual relations with the International Brotherhood of Electrical Workers, a labor organization affiliated with the American Federation of Labor, for more than ten years; and this agreement had been mutually observed and fulfilled, with amicable settlement of such disagreements as arose, and with specific contractual recognition, on the part of the International Brotherhood of Electrical Workers, of the petitioners' paramount duty and responsibility to maintain continuous service to their customers, without interruption because of labor disputes. In 1936, the petitioners had acquired, and had taken over the operation of, two electric generating stations formerly operated by the New York Central Railroad Company; and it was understood by the petitioners that the employees of those two stations had been for some years members of the International Brotherhood of Electrical Workers, or the American Federation of Labor. Among the petitioners' employees for many years had been members of the International Brotherhood of Electrical Workers, and no labor dispute threatening interruption of service had ever arisen with those employees.

21. With the prospect that the laws of the State of New York, in course of enactment by its Legislature, would no longer sanction such an employees' representation plan as had been maintained in good faith since 1933 or 1934, the President of the International Brotherhood of Electrical Workers renewed his demand or request that the petitioners recognize the International Brotherhood of Electrical Workers as collective bargaining agency for at least such of the petitioners' employees as were or became members of that recognized labor organization, and enter into a collective bargaining agreement covering wages, hours and conditions of employment, whereby labor disputes as to such matters could be amicably settled. The petitioners, on April 20, 1937, agreed with the International

Brotherhood of Electrical Workers to negotiate and make such labor agreements, pursuant to which the International Brotherhood of Electrical Workers and its local Unions made up of petitioners' employees became the collective bargaining agency for such of the employees as were or became members of the International Brotherhood of Electrical Workers.

22. After negotiations, such collective bargaining agreements with the International Brotherhood of Electrical Workers and its members were entered into in good faith by the petitioners, effective as of various dates between May 28th and June 15, 1937, and by reason of their provisions were believed to furnish an assurance of the continuity of service and an effective safeguard against interruptions of service through labor disputes, the amicable adjustment or arbitration of which was provided for in such contracts. A copy of such agreement, entered into by and between the petitioner Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers and its Local Union B830, is hereto annexed and made a part hereof, marked "Schedule A." The agreements made between other petitioners and the International Brotherhood of Electrical Workers and its appropriate Local Unions are similar in general form but contain such variant provisions as to vacations, work in inclement weather, and the like, as are appropriate to the conditions of the business of the particular petitioner. Leave is asked to produce a copy of each such agreement upon the hearing of this petition.

The New York State Labor Relations Act

23. Evidently in pursuance of the policy of the State of New York that corporations such as the petitioners created by and under the laws of the State of New York and subject to the regulatory jurisdiction of the State of New York and its Public Service Commission as to their rates, revenues, expenses, properties, accounts, operations, etc., should be and remain subject to the jurisdiction and powers of the State of New York as to their labor relations, the New York State Labor Relations Act was enacted on May 20, 1937, with the approval of The Governor of the State of New York, as Chapter 443 of the Laws of

1937, and is by reference made a part hereof. The Act created a New York State Labor Relations Board, with jurisdiction, powers and duties as therein provided, was effective on and after July 1, 1937, and is patterned generally after the National Labor Relations Act, although somewhat more specific, and is applicable to the labor practices of employers engaged in business within the State of New York. The petitioners aver and believe that it was thereby intended by the State of New York that their labor relations should be and remain in all respects subject to the jurisdiction and laws of the State of New York, to which the petitioners are subject in all other valid respects.

Proceedings by and Before the National Labor Relations Board

Charge Filed by the C. I. O.

24. On or about May 5, 1937, the United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization and hereinafter referred to as "the C. I. O.", filed a charge with the Regional Director of the National Labor Relations Board (hereinafter referred to as "the National Board" or "the Board") for the Second Region. This charge of the C. I. O. alleged or assumed that the National Board had jurisdiction over the petitioners, their employees, and their labor relations. By virtue of Section 10(b) of the National Labor Relations Act (49 Stat. 449; hereinafter called "the National Act"), the filing of such a charge by a labor organization and the specification of claimed grievances or "unfair labor practices" are the basis of subsequent proceedings and complaint against employers subject to the jurisdiction of the National Board, and constitute a specification of the matters as to which complaint may, upon a proper showing, be filed by the Regional Director with whom such a charge is filed. The charge of the C. I. O. as to the petitioners related only to claimed "unfair labor practices", and alleged violations only of Section 8, subdivisions (1), (2) and (3) of the National Act. The "unfair labor practices" charged by the C. I. O. were that the petitioners were discriminating against members of the C. I. O. with regard to hire and tenure of employment, were coercing and intimidating the C. I. O., and were aiding in the organ-

ization of the International Brotherhood of Electrical Workers, an affiliate of the American Federation of Labor (herein called "the I. B. E. W."), in order to interfere with the employees' self-organization. The discriminatory and coercive action alleged was principally the discharge of five employees (Messrs. Wersing, Greulich, Kennedy, Emler, and Wagner), claimed to have been discharged for union activities. The charge was filed by Wersing in behalf of the C. I. O.

Complaint by Regional Director Upon Charge Filed by C. I. O.

25. On or about May 12, 1937, the respondent National Board, in purported futherance of the charge filed by the C. I. O., issued a complaint against the petitioners, and thereby asserted and undertook to exercise jurisdiction over the petitioners and their labor relations. The complaint by the National Board was made and issued for it by Elinore Morehouse Herrick, its Regional Director for the Second Region, New York City. The complaint alleged, in substance, that the petitioners had violated the National Act by engaging in "unfair labor practices" affecting commerce, within the meaning of the National Act, Section 8, subdivisions (1), (2) and (3), which had been specified in the charge filed by the C. I. O., and also within Section 2, subdivisions (6) and (7), which had been in no way specified or referred to in the charge filed by the C. I. O. The complaint of the National Board alleged the improper discharge of the five employees named in the charge filed by the C. I. O. The complaint devoted eighteen paragraphs to an assertion of the jurisdiction of the National Board over the petitioners, and six paragraphs to claimed grievances against the petitioners, which the complaint sought thereby to bring within the jurisdiction of the National Board, rather than under the jurisdiction of the State Board and the State Act. Some sixteen other States have enacted statutes for the like regulation of labor relations and labor practices within their borders, and the question of jurisdiction as between the National and State Boards becomes thereby of considerable public and general importance.

Preliminary Question of Jurisdiction of National Board over Petitioners

26. The first question which arose, and which the petitioners believe should have been and should now be first determined, was that of the jurisdiction claimed by the National Board as to and over the petitioners, their employees, and their local, intra-state labor relations. The petitioners asked and urged that the question of jurisdiction should be heard and determined first and separately, before the petitioners, the National Board, and any others, were subjected to the burden and expense of a protracted hearing on the merits. The proceeding instituted by the National Board on complaint of its Regional Director, Second Region, in furtherance of the charge filed by the C. I. O. having been assigned Case No. II—C-224 upon the docket and records of the National Board, the petitioners entered, and maintained throughout the proceedings without prejudice, a special limited appearance and served a Notice of Motion, dated May 17, 1937, to dismiss the complaint for want of jurisdiction, on grounds particularly stated for a prior and separate hearing and determination of the jurisdiction of the National Board. A copy of the petitioners' Notice of Motion and of the affidavit upon which it was based is made a part of this petition, marked "Schedule B."

The Grounds of Challenge of Jurisdiction

27. The same objections to jurisdiction were raised as an affirmative defense in the verified answer filed by the petitioners (respondents before the National Board) as follows (Par. XIX; S. M. 900):

"The respondents jointly and severally allege that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect 'commerce' as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of

are under the jurisdiction of the State of New York and not of the Federal Government, and that the Legislature of the State of New York, has, upon the recommendation of The Governor, enacted an Act entitled 'An Act to amend the Labor Law, in relation to establishing a State Labor Relations Board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the Department of Labor' (Chapter 443 of the Laws of 1937), by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder. The respondents severally ask that the complaint and the proceeding be dismissed accordingly."

The petitioners' objections and contentions as to jurisdiction were also raised and reserved by appropriate motions and objections, from time to time during the hearings before the National Board (S. M. 6, 11-14, 40, 367-368, 523, 1429-1432*).

Prior Adjudication that Petitioners are not in Interstate Commerce

28. The efforts of the petitioners to obtain consideration of the question whether the National Board had any jurisdiction over the petitioners were due particularly to the fact that the petitioners had lately been adjudicated to be engaged exclusively in intra-state business and to do nothing which burdens or affects interstate or foreign commerce; and the assumption and exercise of jurisdiction by the National Board ignored and proceeded in disregard of that adjudication, which was duly proved in evidence before the Trial Examiner on the first day of hearings (S. M. 26-34).

29. In Consolidated Edison Company of New York, Inc., et al. v. Lamar Hardy, et al., an action brought in the

* The references in this petition to "S. M." are to pages of the *typewritten* transcript of record of the hearings before the Trial Examiner of the National Labor Relations Board.

United States District Court for the Southern District of New York to obtain an adjudication as to the applicability or validity, as to them, and to enjoin the enforcement against them, of the provisions and requirements of the Public Utility Holding Company Act of 1935, a final decree pro confesso was obtained by the plaintiffs on October 23, 1936. The judgment-roll was duly placed in evidence before the Trial Examiner by the present petitioners as their Exhibit No. 1 (S. M. 34). The defendants against whom judgment was obtained in that action were the United States Attorneys and other local officers of the United States who were charged with duties to enforce the statute. The defendant representatives of the Government of the United States did not deny the allegations of the bill of complaint or contest the right of the plaintiffs to a final decree in their favor. The Securities and Exchange Commission and its Regional Administrator in New York City were named as defendants and served with process; but service was quashed by the Court, upon their motion. Chief Counsel Burns of the Commission, and Assistant Attorney-Generals Benjamin Cohen and Thomas Corcoran, appeared and took part in the case.

30. In entering a decree pro confesso as to the inapplicability of the Federal statute to various of the respondents here, the United States District Court, per Caffey, D. J., referred, on July 30, 1936, as shown by Petitioners' Exhibit No. 2, to the "concession" by the Government

"that *the corporate plaintiffs are engaged exclusively in intra-State business and do nothing which directly burdens or affects interstate or foreign commerce.*" (Italics supplied.)

Final decree was entered accordingly on October 23, 1936. The Government of the United States took no appeal from such decree; and the time to appeal therefrom has expired (Exhibits Nos. 1 and 2 for petitioners). The decree pro confesso is shown by the judgment-roll to have been based upon a showing of facts substantially similar to that set out here in the Stipulation for the Determination of Question of Jurisdiction (Board Exhibit No. 2). The petitioners allege that this will appear from an examination of the allegations of Paragraphs 1, 2, 11, 12, 13, and related

paragraphs, of the bill of complaint, which were not denied or contested by the Government and so were taken by the Court to be true (see Thomson v. Wooster, 114 U. S. 104), whereas in the present case substantially the same facts have been agreed upon and stipulated by the National Board and the petitioners.

Request for Prior and Separate Hearing as to Jurisdiction Denied

31. Notwithstanding, the motion for a prior and separate hearing by and before the National Board on the question of jurisdiction was denied by it. The Order entered on June 2, 1937, provided that

"A complaint having been duly issued in the above matter alleging that respondent has engaged is certain unfair labor practices within the meaning of Section 8 of the National Labor Relations Act, and thereafter respondent having filed a motion to dismiss the complaint and having requested a hearing on said motion before hearings held upon the complaint, and the Board having duly considered the matter:

"It is hereby ordered that the respondent's request for a hearing on the motion to dismiss the complaint before any hearing is held on the complaint be and hereby is denied."

Reserving their objections and limited appearance, the petitioners duly excepted to these determinations (S. M. 38-39). The motions to dismiss for want of jurisdiction were renewed and amplified, at the close of the Government's case (S. M. 1429-32). At the close and submission of the whole case, the petitioners respectfully renewed their request that a hearing be granted and held by and before the whole National Board on the question of jurisdiction; but no such hearing was ever accorded to the petitioners by and before the National Board, on the question of jurisdiction or any other phase of the case.

Repeated Amendments of the Complaint During the Hearings

32. The complaint of the Regional Director of the National Board was amended from time to time during the hearings (S. M. 39, 364-365, 1425-1426); where the changes

were substantial, this was allowed over the petitioners' objections (S. M. 365-368, 523, 1426). The complaint as first filed varied substantially from the charge filed by the C. I. O.; the subsequent amendments were without relation to the charge, which was never amended or supplemented. The verified answer of the present petitioners was filed on June 14, 1937 (S. M. 900, 1501). In filing their answer, the petitioners retained their special and limited appearance, and the answer re-asserted and reserved their objections to the jurisdiction of the Board (Rules and Regulations, Series 1, as amended; Article II, Section 18).

33. Hearings before a Trial Examiner having been begun on June 3, 1937, the first amendment of the complaint took place on June 10, 1937, when an amendment was allowed, pursuant to motion, to amend Paragraphs 19, 20 and 21 of the original complaint by adding thereto the name of Stephen L. Solosy as an additional discharged person within the purview of those paragraphs. The amendment was allowed without objection from the present petitioners, who reserved, however, their objections to jurisdiction.

34. On June 14, 1937, the National Board moved further to amend its complaint. This amendment changed Paragraph 23 thereof so as to allege, for the first time, that the matters and things set out in Paragraph 22 of the complaint affected "commerce" as defined in the Act. Only by such an averment could the matters alleged in Paragraph 22 be brought within even a claim of jurisdiction of the National Board. The particular significance was that Paragraph 22 was the paragraph which contained the allegations as to the I B E W. Up to that time, these had not been alleged to affect commerce as defined, and the I B E W as a bargaining agency had not been attacked in the complaint, as the issues were understood. The amendments were deemed substantially to change the nature and scope of the issues under the complaint, and to produce a fatal defect of parties. The purpose and effects of these changes were brought out in the grounds of objections and motions to dismiss for defect of parties (S. M. 523); and counsel for the petitioners said (S. M. 365-366):

"This application this morning for an amendment of which I had information on Saturday by bringing the alle-

gations of paragraph 22 into the scope of the averments of paragraphs 23 and 24, which previously had contained no reference to paragraph 22, certainly have the effect, if they are granted, of bringing an 8 (2) cause of action definitely into this case. Under the circumstances, although I realize the entire good faith of all that has taken place, I do not think that in behalf of the respondents we should consent to the amendment. We reserve our previous objections, not only to the jurisdiction, but also to this broadening of the complaint under which we are proceeding."

The granting of this further amendment of the complaint, over objections, was excepted to, at the close of the hearing on June 14, 1937; and counsel for the petitioners noted his exception (S. M. 523):

"I respectfully except, and in behalf of the respondents reserving our objections to jurisdiction, we ask that this proceeding be now terminated because of a fatal defect of the parties."

This request was denied, and the hearing proceeded on the changed and broadened issues. Testimony was taken accordingly; and the decision, findings, and Order of the National Board embrace many matters brought within the purview of the case only by and after the allowance of this vital amendment. If it should be now claimed nevertheless that the effects of this highly prejudicial amendment in course of trial were obviated by the finding of the National Board that the petitioners were not guilty of "unfair labor practices" within the scope of Section 8(2) of the National Act, then it follows that much of the testimony and many of the findings and directions of the National Board were outside the issues presented by the pleadings, or else that these matters were brought within the purview of the case only by a cryptic and highly improper further amendment allowed only at the final hearing (S. M. 1426).

35. On the last day of the hearings (July 6, 1937), counsel for the National Board moved vaguely that the pleadings in the case be conformed to the facts (S. M. 1426). Questioned by the Trial Examiner as to what he meant by such a motion, counsel for the National Board replied (S. M. 1426):

"Just a question of having the dates and other matters which appear in the complaint made certain by the testimony of witnesses who have appeared in the proceedings."

Counsel for the petitioners objected to the granting of the amendment on the ground (S. M. 1426):

"We are here upon the complaint and charge.

"Granted that the proof does not sustain the complaint and the charge, I do not believe that this Board would have power to amend at this stage, and it will certainly appear that there has been no notice of hearing upon anything except the complaint in its present form."

Before the closing of the case by the Trial Examiner on July 6th, counsel for the petitioners asked for an opportunity for a further hearing to permit the submission of additional proof. In support of that application, he cited the fact (S. M. 1580):

"• • • that over my objection this morning, your Honor allowed the Board, the Government, to amend its complaint to conform to proof. Now, I assert an absolute right under those circumstances to present proof and meet such changes and such issues and facts as your Honor allowed.".

To which the Trial Examiner replied (S. M. 1580):

"I am afraid I consider myself bound by the decision of the Board in respect to eliciting testimony."

The decisions and rulings of the Trial Examiner, allowing each of the above-stated amendments, are affirmed and adopted in the decision of the National Board. Copies of the complaint and answer, showing the amendments, are by reference made a part of this petition.

Validity of Contracts with I. B. E. W. Not Within Issues

36. The findings and conclusions of the National Board that the petitioners' collective bargaining contracts with the I. B. E. W. and its seven Local Unions should be "disestablished" and disregarded, and are invalid, and that the I. B. E. W. consequently cannot act as the bargaining agent of such of petitioners' employees as choose to belong to the I. B. E. W. and bargain through it, were in no way within the scope of the charge filed by the C. I. O., and were in no way within the scope of the complaint on which the notice of hearing was based and given and pursuant to which

the hearings were conducted. The complaint at first served and the complaint as repeatedly amended nowhere refer to such contracts and such issues. If they were brought into the case at all for the purposes of the National Board's decision and Order, it must have been by vague amendments allowed under such objectionable circumstances as to deprive the petitioners of a fair trial and full hearing upon defined issues, all contrary to the constitutional safeguards.

37. To proceedings aimed at or involving the validity of the contracts with the I. B. E. W. and the continued observance of the contractual rights under them the I. B. E. W. was a necessary and indispensable party. It was never named as a party to the proceeding. Under the Rules and Regulations of the National Board, only those named as parties to a proceeding may participate or be heard. Counsel for the National Board claimed (S. M. 519-520) that his Exhibit No. 1 showed that notice of the proceeding, with a copy of the original complaint, was served upon Local No. 3 of the I. B. E. W. at 103 East 25th Street, and that its receipt was acknowledged by one D. Kaplan on May 12, 1937. Local Union No. 3 was not identified as a party to the contracts or to be a general agent of the I. B. E. W. or authorized to accept service of notice for it. Moreover, the complaint at that time suggested no issue as to the I. B. E. W. contracts. Not until June 14, 1937, was the complaint amended so as to allege that the claimed acts of assistance and coercion involving the formation of the I. B. E. W. came under the Board's jurisdiction because they were claimed to affect "commerce" as defined in the National Act; and not until July 6, 1937, after all testimony had been closed, was the complaint amended, if it ever was, at most to cover supposedly unsubstantial variances between the pleadings and the proofs (S. M. 1426). Nothing in the record has ever indicated that the I. B. E. W. or its Local No. 3 (in no way identified with the petitioners' contracts or employees) was served with any notice whatever, at any date subsequent to May 12, 1937, which was before the repeated amendments of the complaint had been undertaken.

National Board Invades Judicial Functions in "Dis-establishing" Contracts

38. The National Act does not vest in the National Board jurisdiction or power to invalidate, annul or "dis-establish"

contracts between employers and recognized labor organizations, or power to direct and require one party to such contracts, in the absence of the other, to disregard and "disestablish" such contracts. Judicial power as to such contracts cannot lawfully be delegated to the Board, and cannot lawfully be usurped and exercised by the Board as an administrative agency. Construed by the Board as delegating to it such judicial powers, the National Act as so construed is repugnant to the Constitution of the United States.

Hearings and Stipulation for Determining Jurisdiction

39. The first hearing before the Trial Examiner, Mr. Robert H. Gates, designated by the National Board, took place in New York City. The evidence received on that day related to the question of jurisdiction over the petitioners, on which the pertinent evidence had been put in the form of a "Stipulation for the Determination of Question of Jurisdiction." This stipulation of the parties was offered by the National Board as its Exhibit No. 2, and constitutes the record on which the question of jurisdiction is to be determined. A copy of that stipulation is by reference made a part of this petition, and leave is asked to submit it separately to the Court.

Hearings Before the Trial Examiner on Other Issues

40. Testimony on the merits was begun on June 10, and was continued on June 11, 14, 15, 16, 17, 23, 24 and July 6, 1937. Some twenty-eight witnesses were called by the National Board, and twenty exhibits were marked in behalf of the Board. A great deal of the evidence was in documentary form, received as exhibits. Twenty-five exhibits were marked in behalf of the petitioners. The stenographic transcript comprised 1584 pages.

Petitioners Were Arbitrarily Denied a Fair and Full Hearing

41. The case in behalf of the National Board was completed unexpectedly on June 24th, aside from a few minor matters (S. M. 1410, 1416). Recess was taken until July 6th because of the absence of Mr. Floyd L. Carlisle, Chairman of the Board of the petitioners, who was in Europe (S. M. 1415). Decision was reserved as to whether the testimony of Mr. Harold C. Dean (who was in Milwaukee, Wis-

consin, in attendance at a meeting of the American Institute of Electrical Engineers) and of other necessary witnesses for the petitioners, would be received on the adjourned date (S. M. 1421). Leave was granted to petitioners' counsel to present the matter to the National Board by letter (S. M. 1421). This was done by petitioners (their Exhibit No. 25 before Board; see "Schedule C" attached to this petition).

42. On July 6th, the case for the National Board was completed (S. M. 1425-1427), motions were made in behalf of the Board (S. M. 1425) and the petitioners (S. M. 1426-1432); and the testimony of Messrs. Carlisle and Dean was taken (S. M. 1433-1576). Under the direction of the National Board (Respondents' Exhibit No. 25a), the Trial Examiner declined to permit the calling of other witnesses (S. M. 1580), who were present in the hearing-room and ready to testify. An offer of proof on behalf of the petitioners was made, both before and after the omnibus amendment of the complaint on the last day (S. M. 1581-1584); and counsel for the petitioners duly excepted to the refusal to permit the presentation of material testimony of witnesses (S. M. 1584), two of whom were present, and were necessary for the refutation of matters brought belatedly into the case by improper amendment of the complaint. The petitioners allege that the Trial Examiner, acting at the instigation and under the telephoned directions of the National Board, arbitrarily and unnecessarily denied to the petitioners a fair, full hearing according to the law of the land, and deprived them of the protection and benefit of testimony to meet issues belatedly and improperly brought into the case by amendment and without the presence of the party indispensable for the litigation and determination of such issues, all contrary to the constitutional rights of the petitioners.

43. The National Board having belatedly brought the I. B. E. W. contracts into the case by amendments of the pleadings, it is now claimed by the Board, the petitioners without objection amended their answer (S. M. 1431-32) so as to plead, as a further affirmative defense, that the contracts executed by the petitioners and the I. B. E. W. and its Local Unions had rendered moot and beyond the jurisdiction of the National Board any controversy raised by the complaint as amended, with respect to "unfair labor

practices" involving Section 8, subdivisions (2) and (3), thereof.

Arbitrary Exclusion of Petitioners' Testimony

44. The utterly mistaken and arbitrary considerations which led the National Board to direct and require its Trial Examiner to close testimony on July 6, 1937, and to refuse to receive important testimony offered by the petitioners and available through witnesses then present in the hearing room (S. M. 1576-79), were fully brought to the attention of the National Board, both at the time and at the suggestion or with the permission of the Trial Examiner, and subsequently when the petitioners were urging the National Board for the granting of an opportunity to present the relevant and important testimony which had been excluded despite the substantial amendment of the complaint during the last minutes of the last session before the Trial Examiner (S. M. 1580-84). Counsel for the petitioners specifically called attention to petitioners' need and right to present such testimony in view of the amendments then and there allowed (S. M. 1580), but the Trial Examiner felt obliged to adhere to his telephoned instructions from the National Board in Washington.

45. All of these matters were the subject of correspondence between the National Board and petitioners' counsel, before and after the final hearing, with permission of the Trial Examiner (S. M. 1576). Copies of this correspondence are annexed to this petition and made a part thereof, as "Schedule C." Particularly from the National Board's letter of July 8, 1937, and the petitioners' reply of July 19, 1937, petitioners believe that it appears clearly that the direction of the National Board for the exclusion of such testimony was based upon a wholly mistaken understanding of what had taken place at the hearings. Although these mistaken and arbitrary assumptions of the National Board in Washington were duly brought to its attention, with citations of the actual state of the record, the petitioners were never given an opportunity to present such testimony, even after the case had been "transferred to and continued before the Board" (Order of September 28, 1937; quoted in Paragraph 38 hereof).

Trial Examiner Permitted Remote Hearsay and Mere Rumor to Dominate the Testimony

46. The petitioners believe, and therefore allege, that the testimony received by the Trial Examiner as material and relevant to the allegations of the complaint other than that of the jurisdiction of the Board over the petitioners consists so predominantly of remote hearsay and mere rumor repeated under circumstances which could give it no probative force whatever as against the petitioners, and that the record here is so utterly dominated by such hearsay and rumor, that the decision, findings and Order of the National Board could not be said to be supported by evidence, in any legal sense. As to the issue of jurisdiction, the petitioners aver that the findings of the Board (Findings, Par. IV) are without any evidence whatever to support them. The petitioners alleged that, on the part of the witnesses called by the Board from the C. I. O. and the Independent Union, there was a great deal of partisan and argumentative talk on the stand, most of it remote and utterly worthless hearsay, in no way related to or binding upon anyone, and that such testimony should have been excluded from the record and not admitted at all; its purpose was only to try to paint and color a picture that would serve the ends of the labor organization to which such witnesses belonged; viz., the C. I. O. or the Independent Union; in support of which allegations the petitioners cite and refer to the transcript of the hearings before the Trial Examiner. The petitioners further allege that hearsay three or four degrees removed was resorted to indiscriminately, and could have no probative force, in support of which allegation the petitioners cite and refer to the said transcript. To illustrate: A member and paid organizer of the C. I. O. (Kennedy) would testify to what another member and organizer of the C. I. O. (Young) told him on the telephone (S. M. 645), as to what some other employee told Young that he thought the management was doing or trying to do (S. M. 646). Then the other C. I. O. member (Young) took the stand and gave more of similarly remote hearsay. (S. M. 1123).

Decision of Board is Based on Evidence of no Probative Force or Effect

47. The petitioners recognize that, in hearings before an administrative but quasi-judicial tribunal such as the Na-

tional Board, some relaxing of the "hearsay rule" is necessary and proper, so long as the testimony first received is later connected, is inherently of such a character and tenor as to carry to the minds of reasonable men a conviction of the truth of the matters narrated (not of the fact that they were narrated), and the ultimate findings are based upon substantial evidence. The petitioners respectfully allege, however, that an examination of the "testimony" here taken will disclose that the relaxing of the "hearsay" rule was pressed beyond all reason and beyond permissible limits in the present proceedings. A case against the petitioners could not be made by narrating what one employee said to another, about a labor organization which they both opposed, or by narrating what was said by some one (not on the stand) about what was said and done at a meeting or conference of employees at which the management was not present; yet instances of this character abound in this record and are the exception rather than the rule. Objections duly made and pressed, on many occasions, in behalf of the petitioners, to the receipt of wholly incompetent and improper evidence, were in almost every instance overruled by the Trial Examiner, and exceptions were duly taken thereto. The decision, findings and Order of the National Board specifically affirm and adopt the many erroneous rulings of the Trial Examiner in admitting and excluding testimony. The petitioners allege that the findings made by the National Board in support of the allegations of the complaint, other than those as to the jurisdiction of the Board over the petitioners, accepted and took such remote, unconnected, partisan and utterly worthless hearsay as virtually the sole "evidence" for any such findings; and such a basis of finding and determination was arbitrary, contrary to law, and violative of the rudiments of fair hearing.

Petitioners Were Arbitrarily Denied a Report by the Trial Examiner Who Heard the Evidence

48. Testimony having been closed by Trial Examiner Gates, over the petitioners' objections and with their testimony uncompleted on July 6, 1937, the orderly course under Rules 34 to 36 of Rules and Regulations, Series 1, as amended, issued by the National Board under the National Act was the preparation and filing of an intermediate

report by the Trial Examiner, the service of the same upon the petitioners and other parties, the affording of an opportunity to the petitioners and other parties to file objections and exceptions to such intermediate report, and then a hearing of the matter by and before the full National Board, with an opportunity to offer further testimony (including that arbitrarily excluded) if the National Board was willing then to receive it. In any event, if that procedure were followed, there would be an opportunity for argument before the National Board and for the submission of briefs to the National Board; also an opportunity to ask for additional findings and for the correction of erroneous and incomplete findings, if any such findings were made by the Trial Examiner.

49. Each and all of these valuable opportunities, the essentials of fair trial and hearing, were denied and withheld from the petitioners, arbitrarily and without explanation by the National Board. There is no intermediate or other report or findings by the Trial Examiner, who alone saw the witnesses and heard the evidence without the presence of any member of the National Board. No argument has been allowed before the National Board, as to jurisdiction or anything else. No briefs have been permitted to be prepared and submitted to the National Board, on the question of jurisdiction or anything else.

50. On September 29, 1937, nearly three months after the testimony had been arbitrarily closed by the Trial Examiner at the instigation of the National Board, and although no additional charges had been filed with the National Board or its Regional Director as provided by Section 37 of the Rules and Regulations of the Board, the petitioners received a copy of the following unexplained Order by and from the National Board:

"A hearing having been duly held in this proceeding before a Trial Examiner duly appointed, and the Board deeming it necessary, in order to effectuate the purposes of the National Labor Relations Act, that the proceeding be transferred to and continued before it,

"It is Hereby Ordered, in accordance with Section 37 of Article II of National Labor Relations Board Rules and

Regulations—Series 1, as amended, that this proceeding be *transferred to and continued before the Board.*

"By direction of the Board:

Benedict Wolf, Secretary. (Seal.)" (Italics supplied.)

51. The foregoing Order was made without notice to the petitioners and without an opportunity to be heard thereon, and was not based upon any findings of fact by the Board or report by its Trial Examiner. The petitioners have thereby been denied and deprived of a report and findings by the only judicial officer who saw the witnesses and heard the testimony. What he found and reported as to the facts is unknown to the petitioners. The case was never *"continued before the Board"*. Petitioners expected that it would be so continued, and that an opportunity would be afforded for hearing; oral argument, and briefs on the question of jurisdiction, on the denial of opportunity to the petitioners to present and complete their case, and on the many objections and exceptions noted as to the improper receipt of evidence. None of these essentials of fair hearing and determination of issues of such importance has been accorded. On the contrary, without further hearings or affording the petitioners any opportunity to present any further evidence, oral argument or briefs, the National Board handed down its Decision and Order on November 10, 1937.

Collective Bargaining Agreements of Petitioners with I. B. E. W. and its Local Unions

52. Paragraph XV of the verified answer of the petitioners (respondents below) sets forth that

"Respondents further allege that, since April 20, 1937, they have severally negotiated collective bargaining agreements with the International Brotherhood of Electrical Workers and the respective local unions of that labor organization, in behalf of such employees of the respondents as belong to the International Brotherhood of Electrical Workers and such local unions, and that the membership of such local unions is believed by the respondents to represent more than a majority of the employees of each respondent. Such labor agreements negotiated with the International Brotherhood of Electrical Workers have in most instances been executed by and in behalf of both the respondents and the International Brotherhood of Electrical Workers and its

Local Union, but in a few instances are in course of execution at the time of this answer.

53. At the final hearing before the Trial Examiner and in view of the repeated amendments of the complaint over petitioners' objections and exceptions, their answer was amended, without objection from the Board (S. M. 1432), so as to set up the labor contracts (Respondents' Exhibits Nos. 17-22), entered into and made effective on varying dates in May and June, by and between each of the petitioners (respondents below), the I. B. E. W., and the Local Unions constituting much more than a majority (eighty per cent) of the eligible employees of each of the petitioners (Respondents' Exhibit No. 16). The sole and undisputed evidence in the record is that the membership of the petitioners' employees in the I. B. E. W. and its respective Local Unions was, on June 29th, according to the records of the I. B. E. W., as follows:

Membership of Local Unions of the I. B. E. W. Having Collective Bargaining Agreements With Companies of the Consolidated Edison Company of New York, Inc., Group of Companies

(Data furnished to the Companies by the I. B. E. W. as of June 29, 1937)

Local Union No.	Employees eligible to I.B.E.W. membership	Total membership	Per cent of eligibles	Paid-up members	Per cent of eligibles	Cards signed but dues not yet paid	Per cent of eligibles
B-825 (Brooklyn Edison Company, Inc.)	8,100	7,200	89.0	6,150	76.0	1,050	12.9
B-826 (New York Steam Corporation)	970	910	93.7	850	87.7	60	6.1
B-828 (Consolidated Telegraph and Electrical Subway Company)	1,600	1,534	96.1	1,534	96.1	0	0
B-829 (Consolidated Edison Company of New York, Inc.—Electric)	13,200	8,680	65.8	6,018	45.6	2,662	20.2
B-830 (Consolidated Edison Company of New York, Inc.—Gas)	7,000	5,644	80.6	4,144	59.1	150	2.1
B-832 (Westchester Lighting Company)	3,082	2,968	96.3	2,375	77.1	593	19.2
B-839 (New York and Queens Electric Light and Power Company)	4,200	3,537	84.2	2,637	62.7	900	21.4
Totals	38,152	30,473	80.0%	23,708	62.2%	6,765	17.7%

The above figures are to be compared with those set out, in Paragraph 16 hereof, as the agreed and stipulated number of employees of the petitioners (see Stipulation for the Determination of Question of Jurisdiction—Board Exhibit No. 2; Par. 15).

54. The petitioners' answer as so amended sets up, as a separate defense, that by reason of the facts set out in Paragraph XV of the original answer and the further facts

above stated, the allegations of the complaint as to coercion and restraint of employees have become moot and academic; that the National Board has no power or jurisdiction to make any determination or order, under the National Act, in the pending proceeding and under such circumstances, in derogation of the contract lawfully made by the petitioners with a recognized and lawfully existing labor organization, which contract is valid and subsisting under the State Labor Relations Act of the State of New York.

Question of "Representation" Was Not Litigated

55. On the hearings before the Trial Examiner, questions were several times raised, in view of the ambiguous and uncertain character of the various amendments permitted to be made in the complaint after notice of hearing had been given and the hearings started and a great deal of incompetent and highly improper evidence offered and received, as to whether the question of the representation of the petitioners' employees for collective bargaining purposes and the question of the standing and legality of the I. B. E. W. as a collective bargaining agency were or were not involved in the proceeding. As the record shows (S. M. 190, 521), it was several times stated in behalf of the National Board that the question of representation and the question of the standing and validity of the I. B. E. W. as a labor organization entitled to bargain collectively were not involved in the complaint or the proceeding. The hearings proceeded, and were closed, upon that assurance, although counsel for the petitioners repeatedly pointed out (S. M. 190, 521) that proofs were being offered and received that bore solely on those questions and so were contrary to that assurance of the limitation of the scope of the issues in the case.

56. Nevertheless, in disregard of the assurance given by its representative upon the hearings and in disregard of the limitations thereby placed on the issues as to which the petitioners offered proofs, the decision, findings and Order of the National Board cancel and terminate the representation of eighty per cent of the petitioners' employees by the I. B. E. W. pursuant to contracts theretofore in force and in effect "outlaw" and condemn the I. B. E. W. as such collective bargaining agency of much more than a majority

of the petitioners' employees,—all this without the presence and participation of the I. B. E. W. and its Local Unions as parties to such litigation and adjudication, and contrary to the statements made in behalf of the National Board upon the hearings.

57. The collective bargaining contracts in effect between the petitioners and the I. B. E. W. and its Local Unions secure to the petitioners, their employees, their customers, and the general public, various substantial rights and contractual advantages, in the nature of property rights, which would be in effect destroyed if the decision, findings and Order of the National Board were permitted to stand.

58. The collective bargaining contracts outlawed by the National Board were placed in evidence by the present petitioners as their Exhibits Nos. 17 to 28 (S. M. 1470-1471). A typical agreement is annexed to this petition as "Schedule A." That in each instance the Local Union comprises much more than a majority of the eligible employees of each petitioner is the undisputed evidence (Respondents' Exhibit No. 16). These contracts were executed and made effective on various dates between May 28th and June 15th, 1937. The general character and policy of such agreements had been discussed in first instance by and between Mr. Carlisle for the present petitioners and Mr. D. W. Tracy, International President of the I. B. E. W. (S. M. 1434-1435); but the provisions as to wages, vacations, and some other matters were negotiated directly between the management and committees elected or selected by the employees constituting the respective Local Unions (S. M. 1460, 1461, 1465-1466). Mr. Tracy participated in the wage negotiations at some points (S. M. 1466, 1472).

Scope of the Contracts Invalidated by Board.

59. By each contract, the employer (Article II)

"recognizes the Brotherhood as the collective bargaining agency *for those employees who are members of the Brotherhood.* The Consolidated Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Consolidated Company or any of its agents, against

any employee because of his membership in the Brotherhood. *The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Consolidated Company time or property.*"

Each contract provides (Article I) that it shall "apply to all employees" of the Company "*who are members of the Brotherhood* and are engaged in operations essential to the furnishing" of the particular kind of utility service supplied to consumers, "including meter readers, elevator operators, and other building employees, but *not including general foremen or supervisors in charge of any classes of labor,* watchmen, or temporary employees."

Responsibility and Procedures Assuring Against Interruptions of Service

60. From the point of view of the public and the petitioners (S. M. 1459), and probably also the employees, one of the most vital, inducing elements in such contracts was the setting up of procedures which would recognize the special public obligations of the petitioners in the supplying of local utility service under plenary regulation by the State of New York through its Public Service Commission, and particularly the public obligation to render adequate and economical service without interruption (Public Service Law, Section 65). Provisions which will prevent the interruption of service because of any labor disputes, by providing a mutually binding forum and formula for their solution, were and are deemed by the petitioners to be of prime public importance (S. M. 1459).

61. The "recital" of each contract (page 1) contains provisions similar to those of the contract with the gas employees of the Consolidated Edison Company; viz., that its purpose is to set up such a system of collective bargaining.

"as will best promote and improve the economic welfare of employees of the Consolidated Company who are members of the Brotherhood and enable the Consolidated Company *efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory.*"

Arbitration in Lieu of Strikes or Lockouts

62. Article XII of each contract is entitled "Future Negotiations and Outlawing of Strikes and Lockouts." It has a vital bearing on the jurisdictional question here. Articles X and XI erect mutually binding procedures for the adjustment and arbitration of grievances and for the review of the discharge of employees, with the Governor of the State of New York appointing the third and neutral arbitrator, if need be. Article XII provides for the negotiation, and if need be the arbitration, of the terms of future contracts as to wages, hours, and other working conditions, on a basis which precludes strikes or lockouts, gives practical assurance against the interruption of service, and recognizes the paramount public obligations of the Company under the laws of the State of New York. For example: Article XII of the contract between the Consolidated Edison Company and I. B. E. W. Local Union No. B830 (gas employees) is as follows:

"Future Negotiations and Outlawing of Strikes and Lockouts

"18. Joint conferences between representatives of the Consolidated Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. *The representatives of the parties hereto shall give due weight in such negotiations* to the relatively high degree of continuity of employment which the Consolidated Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to *the fact that the Consolidated Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law.* In the event the conferees

should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and *there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.*"

On November 9, 1937, it was announced by the I. B. E. W. and the petitioners that, at the instance of the I. B. E. W. and four of its Local Unions, differences arising under Article VII of the contracts were being submitted to arbitration, without cessation of work by members of the I. B. E. W. On November 10, 1937, the National Board issued its decision, findings and Order, undertaking to invalidate and annul the contracts under which the arbitration was to proceed.

Contract Provisions for Employees' Welfare

63. The standard provisions of the contracts as to hours of employment and working conditions (Article III), vacations (Article IV), and "provisions for sickness, disability, superannuation, retirement, etc." of employees (Article VI), will be recognized as fair and progressive. The undertaking of each of the petitioners, through Article VI of the contracts, parallels that of the Consolidated Edison Company as to its gas employees:

"Provisions for Sickness, Disability, Superannuation, Retirement, etc.

"8. The Consolidated Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Consolidated Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Consolidated Company further states (but without modifying the voluntary and non-obligatory character of its Provisional

Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained."

Before this Court, within the present year, the petitioner Consolidated Edison Company of New York, Inc., defended the constitutionality of the United States Social Security Act against suit by one of its stockholders (Norman v. Consolidated Edison Company of New York, Inc., decided April 12, 1937; 89 Fed. [2nd] 619).

Wage Increases Granted by Contracts

64. As to "wages and classifications" (Article V), the contracts which were first negotiated between the management and the committees selected by employees through some of the Local Unions provided, as their form and context show (see, also, S. M. 1460-66) for a five per cent increase in the rates of pay of all employees receiving less than $5,000 a year, excepting those who had already received increases of at least five per cent in 1937. Subsequently, in negotiations between the Consolidated Edison Company and the committee chosen by its electric employees, a further provision for additional wage increases was obtained from the management (S. M. 1464); and this further provision was attached as a "rider" to all contracts, including those already executed (S. M. 1464-1465, 1469; see, also, Article V of Respondents' Exhibits Nos. 17-22).

65. It was represented to and understood by the management that these labor contracts were negotiated in each instance by committees selected by the Local Unions (S. M. 1460, 1465, 1466, 1480, 1481) comprising much more than a majority of the employees (Respondents' Exhibit No. 16); that these committees had the aid and advice of Mr. Tracy (S. M. 1466, 1472); and that in all or most instances, the contracts were reported to the management to have been submitted to, and to have been authorized or ratified by, the employees themselves at meetings of their Local Unions (S. M. 1496).

66. Contracts made under such circumstances and securing to the petitioners, their employees, their customers, and the general public, such substantial advantages, are

undertaken to be invalidated and "outlawed" by the decision, findings and Order of the National Board, contrary to and outside the defined issues of the complaint and proceedings, without support in the evidence, without the presence of the I. B. E. W. and its Local Unions as parties to such proceedings and determination, and wholly beyond the powers delegated to the National Board. If the National Act is to be construed and applied so as to confer on the National Board jurisdiction and power to hear such matters and to make such determinations as to contracts under such circumstances, the National Act as so construed and applied is invalid, unconstitutional, and repugnant to the rights of the petitioners under the Constitution of the United States.

The National Board's Conclusions of Law

67. On November 12, 1937, the Board served upon the petitioners its Decision and Order. It contains the following generalized "Conclusions of Law":

"Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

"1. United Electrical and Radio Workers of America, and its predecessor unions, and International Brotherhood of Electrical Workers are labor organizations within the meaning of Section 2(5) of the Act.

"2. Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy were, at the times of their discharges, and at all times thereafter, employees of the respondents, within the meaning of Section 2 (3) of the Act.

"3. The respondents, by discriminating in regard to the hire and tenure of employment of Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy and thereby discouraging membership in United Electrical and Radio Workers of America and its predecessor unions, have engaged in and are engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

"4. The respondents, by interfering with, restraining, and coercing their employees in the exercise of the rights

guaranteed in Section 7 of the Act, have engaged and are engaging in unfair labor practices, within the meaning of Section 8 (1) thereof.

"5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

"6. The respondents have not engaged in unfair labor practices within the meaning of Section 8 (2) of the Act."

The Sweeping Directions of the Order of the National Board

68. The Order of the National Board dated November 10, 1937, reads as follows:

"Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

"1. Cease and desist from:

"a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

"b. Urging, persuading, warning or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

"c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

"d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property, and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

"e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

"f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

"g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

"h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

"a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

"b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy for any loss of pay they have suf-

fered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

"c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants, and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

"d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith;

"3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(2) of the Act, is hereby dismissed without prejudice."

Specification of Grounds for Review

69. The petitioners believe, and therefore allege, that they are aggrieved and greatly prejudiced and injured by the mandatory and injunctive provisions of the Order of the National Board dated November 10, 1937, and by the findings and conclusions upon which the Order and such provisions thereof were based. Maintaining that the petitioners are in no way subject to the jurisdiction and powers of the National Board and the National Act, the petitioners

respectfully ask for a review of the said decision, findings, and Order, and of the said mandatory and injunctive provisions, by this Court; and the petitioners state and assign the following further grounds and reasons for such review:

Erroneous Findings and Conclusions as to Jurisdiction

(a) That the National Board erred in taking jurisdiction of the case, upon the charge filed by the C. I. O.; that the National Board erred in causing a complaint to be filed by its Regional Director for the Second Region, against the petitioners, upon such charge; that the National Board erred in failing and refusing to dismiss the complaint and the proceeding, upon the motion duly made by the petitioners in advance of hearing for want of jurisdiction; that the National Board erred in refusing to dismiss the complaint and proceedings for want of jurisdiction, upon motions duly made by the petitioners upon and during the hearings and at their close; that the National Board erred in refusing to dismiss the complaint and proceedings, in and by its such final decision, findings and Order; that the National Board erred in failing and refusing to hold that any such matters as were complained of were, if duly substantiated, within the exclusive jurisdiction of the State of New York and the New York State Labor Relations Board, pursuant to the New York State Labor Relations Act.

(b) That the National Board's findings as to the facts, particularly Paragraph IV thereof, which deals with the effect of the alleged unfair labor practices upon commerce as defined in the Act, are not supported by the evidence contained in the record herein and are contrary to the evidence and contrary to law; that the National Board should have found that the production, sale and distribution of gas, electric and steam services are the principal and actual business of the petitioners, and that such business and all activities in connection therewith are, and have been duly adjudicated to be, essentially intra-state and local and not to constitute operations in, or affecting, or in respect of, commerce as defined in the National Act or otherwise within the purview of the National Act.

(c) That the National Board erroneously found and concluded that the purchase and transport of raw materials

used in producing gas, electricity and steam by petitioners are sufficient to constitute operation in or affecting, or in respect of, commerce as defined in the Act; that there is no evidence to support such finding, and the conclusion is contrary to the evidence and contrary to law.

(d) That the National Board erroneously found and concluded that the supply of electric energy by some of the petitioners to local, State and Federal agencies located within their franchise territory, and the dependence of a number of particular consumers, located within petitioners' franchise territory, upon the supply of electric energy furnished by the petitioners, constituted operations by the petitioners in, or affecting, or in respect of, commerce within the purview of the National Act; that the National Board should have found and concluded that the supplying of some electric energy, gas or steam to governmental agencies does not subject the petitioners to the National Act; that the supplying of some electric energy, gas or steam to agencies of the Federal Government does not operate to confer jurisdiction on the National Board and is not a ground on which the National Act predicates jurisdiction; and that such sales, as a matter of law, are not sufficient to bring the petitioners' operations within the purview of the National Act.

(e) That the National Board should have found and concluded that the stipulated facts as to jurisdiction would sustain no other finding or conclusion than that a relatively small number of petitioners' customers are engaged in interstate commerce; that the petitioners are not made to engage in interstate commerce or in operations in, or affecting, or in respect of, commerce as defined in the National Act, because of the fact that some of the petitioners' customers are themselves engaged in interstate commerce or communication; and that the use which some of these customers may make of the comparatively small quantity of electric current supplied and delivered them within the petitioners' territories in the State of New York does not constitute operations in, or affecting, or in respect of, commerce as defined in the National Act or otherwise within the purview of the National Act.

(f) That the National Board should have found as a fact and concluded as a matter of law that the petitioners'

business of supplying on demand their local consumers at retail is wholly a local business and is subject to State regulation and that the effect on interstate commerce, if there be any, is no more than indirect and incidental.

(g) That the National Board should have found as a fact, and that there is no evidence in the record to support a contrary finding, that the petitioners have been adjudicated to be engaged exclusively in intra-state business and to do nothing which burdens or affects interstate or foreign commerce.

(h) That the record here affirmatively establishes that the claimed discharge of and refusal of two of the petitioners to reinstate six employees were not for membership or activity in any labor organization, did not obstruct or affect interstate commerce, were not in any close or intimate relation, or any relation, to or effect upon such commerce, and did not constitute an unfair labor practice within the meaning of Section 8, subdivision 1 of the National Act; and that the National Board should have found upon the undisputed testimony that these six employees were engaged in work of a distinctly local character, unrelated to the generation or transmission of electricity or gas, and in no way affecting interstate commerce; that Messrs. Wersing, Greulich and Wagner did office work upon "work order" records of local distribution properties of the New York and Queens Electric Light and Power Company (S. M. 539, 1503-1505); that their records and work had a close relationship to the "continuous property records" required and supervised by the Public Service Commission of the State of New York (S. M. 1507); that Messrs. Emler and Kennedy were linemen in the Overhead Bureau of the same petitioner, which operates only in a part of the Borough of Queens and has no generating station (see map attached to National Board Exhibit No. 2); that they worked on local distribution lines, and at the time of the termination of their employment they were extending local lines into consumers' premises (S. M. 758, 1566), for local supply of electricity; that Mr. Solosy was employed in testing and calibrating (for accuracy) the Thomas calorimeters (S. M. 272, 275), used in testing the calorific content of gas supplied to local consumers, to see if such gas maintained the thermal content (Btu's) required by the Orders of the Public Service Commission of the State of New York (S. M.

1319, 1329); that Messrs. Wersing, Greulich and Wagner voluntarily ratified and confirmed the termination of their employment and their discharge therefrom by bringing a suit in the New York State Supreme Court against the petitioner by whom they had been employed to recover additional benefits to which they claimed such termination and discharge entitled them, and that the undisputed proofs in no way showed that these now "stale" claims of discharge, in 1935 or early 1936, produced any substantial labor controversy, brought any dangers of interruption of service to consumers, or in any way affected interstate commerce or any commerce or any other public relationship of any of the petitioners; and that the National Board erred in failing or refusing so to find and conclude.

(i) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that of the approximately 2,324,800 consumers served by this group of Companies with electric service, about 1,896,800 are residential consumers, and that only about 427,100 are commercial consumers (preponderantly small), institutional consumers (religious, educational, charitable institutions and hospitals), and wholesale consumers, and that of the non-residential customers only a small part thereof are themselves engaged in interstate commerce.

(j) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that your petitioners are domestic corporations, organized and existing under general or special laws of the State of New York; that they are chartered by the State of New York to render essential services only within the State; that they carry on their operations only by virtue of general franchises granted by the State and local franchises granted by cities, towns, villages, etc.; and that your petitioners are accountable to local governments and to the State of New York for the adequate and continuous performance of these local franchise obligations.

(k) That the National Board erroneously omitted, failed or refused to find that which it was required to find

as a fact and to conclude as a matter of law, and to consider in its determination, that the supervision by the State over the operations of the petitioners extends to virtually every phase of their manifold activities; that the petitioners can supply service only to those within their local franchise territories; that without making their franchise rights subject to forfeiture, they could not withhold services when application therefor is duly made by inhabitants of their franchise territories; that they must, pursuant to Sections 65 to 72 of the Public Service Law, obey all lawful mandates of the Public Service Commission as to rates, quality and extent of service, accounting records and procedure, new construction, sales and purchases, and security issues in connection therewith, or be subject to the penalties imposed by Section 73, and the summary proceedings provided by Section 74, of the Public Service Law of the State of New York.

(l) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that all of the activities in which employees of the petitioners are engaged, especially as they relate to wages, hours and conditions of employment and method of production and distribution, have a direct effect upon the cost of operation and the rates to be charged, and that the regulation of rates as well as the cost and method of production, distribution and sale of gas and electric service are within the exclusive jurisdiction of the Public Service Commission of the State of New York, by reason of the provisions of Sections 66 and 67 of the Public Service Law.

(m) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that the services which the petitioners render to the inhabitants of the City of New York and County of Westchester have a direct, immediate and necessary effect upon the health, safety and comfort of the individuals and local community which they serve; that the protection of such health, safety and comfort is the sole concern of the City and State of New York; and that the people of the City and State of New York are solely de-

pendent upon the services of the petitioners to fulfil those State and local functions.

(n) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that the generation of electricity is wholly a local intra-state process; that the distribution of the manufactured product, whether it was electricity, gas or steam, is a wholly separate process, and that the business of supplying the 2,324,800 consumers of electric energy, 1,896,800 of whom are residential consumers and the balance commercial consumers, and the approximately 1,165,700 consumers served with gas service, is a local intra-state business which is subject to the exclusive control of the State within which distribution takes place,

(o) That the assumption and attempted exercise of jurisdiction by the National Board in this proceeding are not authorized by any provision of the Constitution of the United States and amount to an unconstitutional usurpation, by an agency of the Federal Government, of powers reserved to the State of New York by Article X of the Amendments to the Constitution of the United States.

As to the Board's Denial of Essentials of Fair Trial and Determination

(p) That the National Board erred in refusing to allow the petitioners to present pertinent, important and available testimony, as more particularly shown in Paragraphs 41, 42, 44, and 45 hereof.

(q) That the National Board erred in allowing the repeated and substantial but vague amendments of its complaint, after notice of hearing had been served, while the hearings were in progress and after testimony had been closed, all as more particularly shown in Paragraphs 32, 34, and 35 hereof.

(r) That the National Board erred in transferring and continuing the case before itself, after the case had been closed, thereby arbitrarily depriving the petitioners of a report and findings by the Trial Examiner who alone saw the witnesses and heard the testimony; that the National

Board erred in omitting and failing to continue the case before it by a hearing by and before the Board, thereby depriving the petitioners of an opportunity to argue before the full Board the question of jurisdiction and other pertinent questions, and of the opportunity to file a brief with the Board, as well as an opportunity to offer to the Board the testimony which had been excluded by the Trial Examiner at the Board's directions, all as is fully shown in Paragraphs 48, 49, 50 and 51 hereof.

(s) That the National Board erred in permitting the record to be made up predominantly of, and to be pervaded and dominated by, remote hearsay testimony and mere rumor, and in basing its decision, findings and Order upon a record so dominated and pervaded, all as is shown in Paragraphs 46 and 47 hereof.

As to Other Prejudicial Errors of the Board

(t) That the record affirmatively establishes that the petitioners have not dominated and interfered with, and do not now dominate and interfere with, the administration of the I. B. E. W. or the Local Unions thereof, and do not contribute financial and other support to it, and have not thereby engaged in and do not thereby engage in any unfair labor practices within the meaning of Section 8, subdivision 1 of the National Act, and that the National Board erred in failing and refusing so to find.

(u) That the record affirmatively establishes as a matter of fact and law that the execution and taking effect of the collective bargaining contracts between the petitioners and the I. B. E. W. and the Local Unions thereof, render moot in this proceeding the allegations of the complaint as to "financial support" and "domination" of the I. B. E. W. and as to "coercion" of employees into joining the I. B. E. W., and that the facts as to those contracts oust the National Board of power and jurisdiction to make in this proceeding any determination or Order in derogation of those contracts; and that the Board erred in failing and refusing so to find.

(v) That the Order issued by the National Board, requiring the petitioners to cease and desist from giving effect to their contracts with the I. B. E. W. and from recognizing the I. B. E. W. as the exclusive representative of their em-

ployees, was and is beyond its power and jurisdiction to make, was and is in derogation of valid and subsisting contracts entered into and observed in good faith, and was and is improper, erroneous, and unjustified either by the facts or the law, and was and is an assumption and attempted exercise of judicial powers not conferred by law on the National Board.

(w) That the Order issued by the National Board, requiring two petitioners to reinstate six discharged employees, places an unreasonably onerous burden upon the petitioners, and would require the petitioners, for the sole reason that such men are members of a particular labor organization, to re-employ men released from work for proper reasons.

(x) That the National Board should have found as a fact and concluded as a matter of law that its failure to name and bring in the I. B. E. W. as a party to the proceeding barred the National Board from assuming jurisdiction as to the subsisting contracts.

(y) That among the National Board's findings as to the facts, there is absent any finding of fact (as distinguished from a conclusion) that the petitioners have been or are engaged in any practices constituting unfair labor practices, which lead or tend to lead to labor disputes burdening or obstructing commerce or the principal flow of commerce, or have or tend to have any close, intimate or substantial relation to any trade, traffic, commerce or transportation among the several States.

(z) That the evidence in the record does not support a finding or conclusion that the discharge of Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, Steven L. Solosy, and the petitioners' failure or refusal to reinstate any of them, interfered with, restrained or coerced the employees of the New York and Queens Electric Light and Power Company in the exercise of any rights guaranteed under Section 7 of the National Act, or that such acts were intended to discriminate in regard to hire and tenure of employment of such employees, or that the discharge of the six employees in any way affected interstate commerce.

(aa) That the record here is barren of evidentiary facts sufficient to support a finding or conclusion that the peti-

tioners have been or are engaged in any acts or practices constituting unfair labor practices in interstate commerce.

(bb) That the findings of fact and conclusions of law and the directive portions of the Order, dealing with the validity, and requiring the dis-establishment, of the contracts made by the petitioners with the I. B. E. W. and its seven Local Unions, were not germane to the complaint before the National Board, and were not lawfully involved in the proceedings, and were unauthorized by and contrary to law and to the Constitution of the United States.

(cc) That the findings and Order enjoining the petitioners from recognizing the I. B. E. W. as the exclusive bargaining agency in the absence of an election by the employees and the absence of the I. B. E. W. as a party to the proceeding, are unwarranted in law and in fact, in that the question of representation was not raised in the complaint before the National Board but was expressly excluded from the consideration of the Trial Examiner and the National Board, so that no evidence was properly received with respect thereto and the petitioners were not called on to litigate that issue.

(dd) That the conclusions of the National Board that the petitioners have engaged and are engaged in unfair labor practices within the meaning of Section 8 (1) of the National Act are as a matter of law inconsistent with and negatived by its conclusion that your petitioners have not engaged in unfair labor practices within the meaning of Section 8 (2) of the National Act.

(ee) That there is no evidence in the record to sustain any finding that the petitioners were employing what the decision terms "industrial spies", at the time of or immediately prior to the hearings. The undisputed evidence showed affirmatively, and the National Board should have found, that the only instance which the National Board sought to present, as to such "industrial spying," was one of alleged "trailing" that was said to have happened in April of 1935, before the taking effect of the National Act, and that any such practices were discontinued by the petitioners in 1936.

Wherefore, the above-named petitioners jointly and severally petition this Court for a review of the decision,

findings and Order of the National Labor Relations Board dated November 10, 1937; and they ask:

(1) That a copy of this petition and of the process of this Court be served upon the respondent National Labor Relations Board as provided by Section 11 (5) of the National Labor Relations Act;

(2) That the National Labor Relations Board be directed and required, by an appropriate Order of this Court, forthwith to certify and file in this Court, pursuant to Section 10 (f) of the National Labor Relations Act, a transcript of the entire record in the proceedings, including therein the Trial Examiner's Report and findings upon the facts if any such Report there was, including all exhibits and the originals of all papers filed with the said National Board, from which the complaint was formulated and issued;

(3) That this petition for review be preferred and heard and determined expeditiously, as provided in Section 11 (i) of the National Labor Relations Act;

(4) That meanwhile and pending the hearing and determination of this petition for review and until ten (10) days after the entry of an Order by this Court upon such determination, the taking effect and any enforcement of such decision, findings and Order and the taking of any steps by the National Board or by the C. I. O. pursuant to or in furtherance of the said decision, findings and Order, shall be in all respects stayed, by an appropriate Order of this Court;

(5) That the said decision, findings and Order, and the mandatory and injunctive provisions and requirements thereof as to the petitioners, be each and in all respects, annulled, vacated and set aside;

(6) That the National Labor Relations Board be ordered and directed to dismiss the complaint and the proceedings, for want of jurisdiction; and

(7) That the petitioners shall each have such other and further relief as may be just and proper in the premises.

Dated November 18, 1937.

Consolidated Edison Company of New York, Inc., and its Affiliated Companies; Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, by Ralph H. Tapscott, President. Whitman, Ransom, Coulson & Goetz, Attorneys for Petitioners, No. 40 Wall Street, Borough of Manhattan, New York City. William L. Ransom, Pincus M. Berkson, Of Counsel.

Duly sworn to by Ralph H. Tapscott. Jurat omitted in printing.

SCHEDULE A

Memorandum of Agreement Between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, Through Its Local Union No. B830

Effective June 15th, 1937

Agreement between Consolidated Edison Company of New York, Inc. (hereinafter referred to as the "Consolidated Company"), and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood").

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Consolidated Company who are members of the Brotherhood and enable the Consolidated Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Consolidated Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of gas service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Consolidated Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Consolidated Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Consolidated Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Consolidated Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per

week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day and December 25th) shall be limited to that which is deemed by the Consolidated Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay, and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Consolidated Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 15th, 1937.

D. W. T. G. T. P. J. A. F. F. G. B. R. H. T.
C. M. B., Jr.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Consolidated Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars ($5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 15th, 1937.

Consolidated Edison Company of New York, Inc., by R. H. Tapscott, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B830, George T. Parker, Joseph A. Fisher, Frederick G. Buchner.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Consolidated Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Consolidated Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Consolidated Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

10. The Consolidated Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

ARTICLE VIII

Safety

11. The Consolidated Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Consolidated Company in accordance with the practice now prevailing in such department.

ARTICLE IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Consolidated Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

ARTICLE X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Consolidated Company and the Brotherhood or its members employed by the Consolidated Company, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Consolidated Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Consolidated Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Consolidated Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Consolidated Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

ARTICLE XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Consolidated Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

ARTICLE XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Consolidated Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Consolidated Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular

operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Consolidated Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

ARTICLE XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In witness whereof, Consolidated Edison Company of New York, Inc., and the Brotherhood and its Local Union have executed this agreement the 15th day of June, 1937.

Consolidated Edison Company of New York, Inc., By R. H. Tapscott, President. International Brotherhood of Electriacl Workers, By D. W. Tracy, International President. Local Union No. B830, George T. Parker, Joseph A. Fisher, Frederick G. Buchner.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

Schedule B

Petitioners' Notice of Motion to Dismiss for Want of Jurisdiction

United States of America

Before the National Labor Relations Board,

Second Region

Case No. II-C 224

In the Matter of

Consolidated Edison Company of New York, Inc., and Its Affiliated Companies, Brooklyn Edison Company, Inc., New York & Queens Electric Light & Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph & Electrical Subway Company, Respondents,

and

United Electrical and Radio Workers of America, Affiliated with the Committee for Industrial Organization

Please take notice, that the above-named respondents, appearing specially and only for the purposes of the motions hereinafter set forth, hereby jointly and severally move that the Board dismiss the complaint and charge herein and terminate the proceeding, upon the grounds that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "commerce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York, and not of the Federal Government, and that the Legislature of the State of New York has, upon the recommendation of The Governor, passed an Act entitled "An Act to amend the labor

law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor", by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

This motion is made by the respondents upon the complaint and charge, without admitting the truth or sufficiency of any of the allegations thereof, and upon the annexed affidavit, sworn to May 17, 1937, by Oscar H. Fogg, Vice-Chairman of the Board of Trustees of the respondent Consolidated Edison Company of New York, Inc.

The respondents respectfully ask that the Board grant a hearing upon this motion, and that the motion be ruled upon and determined, before a hearing is held upon the complaint served on the respondents on May 12, 1937.

The respondents, appearing only specially as above stated, move further that the Board order that the complaint and charge herein, and all proceedings instituted in respect thereto, including the motion above made, be transferred to and continued before the Board, in Washington, D. C., for the reasons that this case involves a highly important issue as to the applicability of the National Labor Relations Act (48 Stat. 449) to the operations of the respondents in local and intra-state production, transmission, distribution, sale or delivery of electricity, gas or steam, or in the furnishing locally of intra-state facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such operations, and that the importance of the issue, not only to the interested parties but to the public, warrants and requires that the hearing and decision of this motion and any further proceedings herein be directly by the Board.

The respondents, appearing only specially as above stated, move further that the Board extend their time to answer the complaint herein to five days after the final determination of this motion, and that any hearing upon such complaint set down to be held by and before the Trial Examiner on June 1, 1937, or by and before the Board, shall be

adjourned and shall not be held until at least ten days after the final determination of this motion.

Dated, New York, May 17, 1937.

Consolidated Edison Company of New York, Inc., by O. H. Fogg, Vice Chairman. Brooklyn Edison Company, Inc., by A. Augustus Low, Exec. Vice Pres. New York and Queens Electric Light and Power Company, by L. A. Coleman, Vice Pres't. Westchester Lighting Company, by E. P. Prezzano, President. The Yonkers Electric Light and Power Company, by E. P. Prezzano, President. New York Steam Corporation, by David C. Johnson, President. Consolidated Telegraph and Electrical Subway Company, by E. S. Callahan, President.

To Mrs. Elinore Morehouse Herrick, Regional Director for the Second Region, 45 Broadway, New York, N. Y. United Electrical and Radio Workers of America, Local 1212 affiliated with the Committee for Industrial Organization, 3 Albee Square, Brooklyn, N. Y. Whitman, Ransom, Coulson & Goetz, Attorneys for Respondents, No. 40 Wall Street, New York City.

Affidavit in Support of Respondents' Motion to Dismiss Complaint

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD,

SECOND REGION

Case No. II-C 224

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and Its Affiliated Companies, Brooklyn Edison Company, Inc., New York & Queens Electric Light & Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph & Electrical Subway Company, Respondents,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the Committee for Industrial Organization

STATE OF NEW YORK,
County of New York, ss:

Oscar H. Fogg, being duly sworn, deposes and says:

1. I am the Vice-Chairman of the Board of Trustees of the respondent Consolidated Edison Company of New York, Inc., and am the Vice-Chairman or a member of the Board of Directors of each of the affiliated Companies also named as respondents in the above-entitled proceeding, and am familiar with the matters and things therein involved. This affidavit is submitted in behalf of each of the named respondents, in support of their motion to dismiss the complaint herein and for the further relief asked therein.

2. The respondents have appeared specially in this proceeding, for the sole purpose of moving jointly and severally to dismiss the complaint and charge herein and terminate the proceeding, upon the grounds, stated in their notice of motion, that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "com-

merce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York, and not of the Federal Government, and that the Legislature of the State of New York has, upon the recommendation of The Governor, passed an Act entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor", by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

Respondents are Engaged Only in Local Operations

3. Each of the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, and New York Steam Corporation, is a local operating public utility company, organized and existing under the laws of the State of New York, engaged in supplying utility service to the public within the City of New York. The respondents Westchester Lighting Company and The Yonkers Electric Light and Power Company are local operating public utility companies, organized and existing under the laws of the State of New York engaged in supplying utility service to the public within Westchester County. The respondent Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State, engaged in carrying on business wholly within the City of New York.

4. Each of the respondents (except the Consolidated Telegraph and Electrical Subway Company) is subject to the regulatory jurisdiction and powers of the Public Service Commission of the State of New York in the respects provided by law, and is generally subject to the regulatory jurisdiction and supervision of the State of New York.

Respondents' Operations are Wholly Intra-State

5. The respondent public utility Companies transmit, distribute, sell or deliver electricity, gas or steam to cus-

tomers within the State of New York, and do not transmit, distribute, sell or deliver electricity, gas or steam in interstate commerce or across any State line. The production, transmission, distribution, sale and delivery of such electricity, gas or steam, by the respondents, take place wholly within the State of New York. All of the manufacturing plants of the respondents and all of their facilities for transmission, distribution and delivery of electricity, gas or steam, as well as their offices and other operating properties, are situated within the State of New York, and are operated and used exclusively within the State of New York. None of the respondents transmits, distributes, sells or delivers electricity, gas or steam that was generated outside the State of New York or that has crossed any State line. The system and lines of the respondents are not interconnected with the lines of any corporation supplying electricity, gas or steam which has crossed any State line.

6. Reference is made in the complaint to a physical interconnection between the electric system and lines of the respondents and the electric system and lines of the New York Power and Light Corporation, one of the Companies of the Niagara Hudson Power Corporation. None of the respondents, however, thereby receives electric energy from, or sells electric energy to, any corporation which receives electric energy from a generating or transmission system in the Dominion of Canada or anywhere outside the State of New York and which transmits or distributes electric energy of such foreign or outside origin. I am informed and believe that the New York Power and Light Corporation does not receive, transmit or sell any electricity generated outside the State of New York.

7. Reference is made in the complaint to electricity supplied by the respondents to the New York Central Railroad Company. Such energy is transmitted and delivered by one of the respondents to the New York Central Railroad Company wholly within the State of New York, and is used by the Railroad Company wholly within the State of New York. Electricity which is supplied by one of the respondents to the New York, New Haven and Hartford Railroad Company and other interstate carriers is likewise transmitted and delivered by such respondent wholly within the State of New York.

8. Reference is made in the complaint to the respondents' production and disposal of various by-products, such as coke, ammonium sulphate, and coal tar. Such by-products are manufactured wholly within the State of New York and are sold and delivered by the respondents within the State of New York, and none of the respondents transports them or causes them to be transported in interstate commerce.

9. Reference is made in the complaint to the fact that the respondents supply and deliver locally electricity, gas and steam to various concerns which are or may be themselves engaged in interstate commerce or communication. But the supply and delivery of such service to such concerns take place wholly within the State of New York, and the respondents do not participate in any interstate activities of such concerns. Although some of the materials and commodities used by some of the respondents locally are purchased in other States and are shipped to such respondents in interstate commerce, they are not used by such respondents in interstate commerce.

10. As used in the National Labor Relations Act (48 Stat. 449), under the definition in Section 2(6), the term "commerce" means

"trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

I am advised by counsel, and verily believe, that the labor practices of the respondents, alleged in the complaint and otherwise, do not affect, burden or interfere with "commerce" as defined in the National Labor Relations Act.

Respondents Have Been Adjudicated to be Engaged Exclusively in Intra-State Business and to do Nothing Which Burdens or Affects Interstate Commerce

11. In an action brought by the Consolidated Edison Company of New York, Inc., and other affiliated Companies, in

the United States District Court for the Southern District of New York, to obtain an adjudication as to the applicability or validity, as to them, and to enjoin the enforcement against them of the provisions and requirements of the Public Utility Holding Company Act of 1935, the defendant representatives of the Government of the United States did not deny the allegations of the bill of complaint or contest the right of the plaintiffs to a final decree in their favor. In entering a decree pro confesso as to the inapplicability of the Federal statute to various of the respondents here, the United States District Court, per Caffey, D.J., referred on July 30, 1936, to the "concession" by the Government

"that the corporate plaintiffs are engaged exclusively in intra-State business and do nothing which directly burdens or affects interstate or foreign commerce."

Final decree was entered accordingly; the Government of the United States took no appeal from such decree; and the time to appeal therefrom has expired.

Respondents are Subject Only to the Jurisdiction and Laws of the State of New York in Labor Matters

12. The respondents do not make their motion to dismiss the complaint for want of jurisdiction in the National Labor Relations Board, because of any desire or purpose to avoid or escape all governmental supervision of their labor practices. The Legislature of the State of New York, upon the recommendation of The Governor, has passed a bill identified as Assembly Introductory No. 2482, Print No. 3248, entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor." This Act is to be known as the "New York State Labor Relations Act". This Act, when approved by The Governor, will take effect July 1, 1937, and will subject the respondents as local, intra-State concerns to supervision and regulation by the New York State Labor Relations Board, authorized for the purpose of exercising, as to such intra-state concerns, supervisory powers and jurisdiction similar to that possessed

by the National Labor Relations Board as to interstate concerns. The granting of the present motion to dismiss the complaint would avoid a duality, if not conflict, of jurisdiction, and keep within State jurisdiction and supervision the matters which are essentially local in their nature and scope.

13. In behalf of the respondents, I submit most respectfully that the orderly determination of labor disputes will be promoted, in the public interest, if all such matters affecting the respondents are left to the governmental powers and authority of the State of New York and to the jurisdiction and powers of the Labor Relations Board of the State of New York, authorized to be created by the New York State Labor Relations Act, inasmuch as the respondents' operations are wholly within that State and are broadly subject in other respects to the regulation and supervision of the laws of the State of New York.

The Complaint and Charge are Without Merit

14. The complaint contains various allegations derived from a charge filed in behalf of a purported labor organization affiliated with the Committee for Industrial Organization. Should the respondent be called upon to answer the complaint by and before a board which has jurisdiction of such matters, the respondents will show that the allegations of the charge are without foundation in fact and wholly without merit. The termination of employment of certain employees mentioned in the complaint took place partly in November of 1935 and partly in July of 1936. None of the persons named was discharged because of his membership or non-membership in any labor organization. In any event, none of the matters alleged has since caused, or is likely to now cause, any interruption of the respondents' service to the public, or any obstruction of or impediment to the normal flow of commerce as defined in the Act. The termination of employment of a few employees, in November of 1935 and July of 1936, in the exercise of the managerial powers and responsibilities of one of the respondent Companies operating solely within the City of New York, could not possibly constitute or create any grounds for a present assumption of jurisdiction by the National Labor Relations Board.

15. I am advised and believe that this proceeding and the respondents' motions present a highly important issue as to the applicability of the National Labor Relations Act (48 Stat. 449) to the operations of the respondents in local and intra-state production, transmission, distribution, sale or delivery of electricity, gas or steam, or in the furnishing locally of intra-state facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such operations, and that the importance of the issue, not only to the interested parties but to the public, warrants and makes advisable the hearing and decision of this motion and of any further proceedings herein, directly by the Board. The respondents accordingly move the Board that the complaint and charge herein, the respondents' motion to dismiss for want of jurisdiction, and any further proceedings in respect thereto, be transferred to and continued before the Board, in Washington, D. C.

Wherefore, in behalf of each of the respondents appearing specially for the purposes of such a motion, I respectfully ask that the complaint and proceeding herein be dismissed, as to each of the respondents, upon each of the grounds stated in the notice of motion, and also that they be granted the further relief asked for in the annexed notice of motion.

O. H. Fogg.

Subscribed and sworn to before me this 17th day of May, 1937. Marion Seitz, Notary Public, New York County. Clerk's No. 657, Register's No. 9-S-632. Commission Expires March 30, 1939. (Seal.)

SCHEDULE C

Correspondence between National Labor Relations Board and Petitioners' Counsel as to Refusal of Board to Receive Pertinent Testimony in Behalf of Petitioners

Whitman, Ransom, Coulson & Goetz,

40 Wall Street, New York

Charles S. Whitman. William L. Ransom. Robert E. Coulson. Jacob H. Goetz. Colley E. Williams. William G. Chambers. Richard Joyce Smith.

June 28, 1937.

Re Complaint of Regional Director for Second Region of National Labor Relations Board v. Consolidated Edison Company of New York, Inc., et al. (Case No. II C-224)

National Labor Relations Board, Washington, D. C.

GENTLEMEN:

By permission of the Trial Examiner in this proceeding (Mr. Robert Gates), we write to place before you its present status.

The hearings were begun on June 3rd. Testimony in behalf of the Board was concluded on Thursday, June 24th. This termination was unexpected by the respondents and their counsel; a considerable number of witnesses whose attendance had been subpoenaed or asked, were not called to the stand. The proceeding involves, as we understand it:

(1) The question of the jurisdiction of the National Labor Relations Board over these local public utility operating Companies and the matters complained of, as against the New York State Labor Relations Board (Laws of 1937, Chapter 443);

(2) The laying off or discharge of six employees, allegedly for activities in labor organizations;

(3) Alleged coercion of some employees into joining the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor; many more than a majority of the employees of each respondent having joined a Local Union of the International Brotherhood of Electrical

Workers, and each of the respondents having entered into and executed a labor agreement with the appropriate Local Union of the International Brotherhood of Electrical Workers; and

(4) Alleged "domination" and financial aid and support of the International Brotherhood of Electrical Workers or some of its Local Unions, by the respondents or some of them.

When the testimony in support of the complaint unexpectedly ended, trial counsel for the respondents asked the Trial Examiner, upon the record, for an adjournment of the hearings until July 6th, to enable the adequate preparation and presentation of the respondents' case. This was urged as warranted, not only by the public importance of the jurisdictional question, the considerable size of the stenographic record (1301 pages), and the fact that many days of hearings had been obviated by time-saving cooperation between Regional Counsel for the Board and trial counsel for the respondents, but also in view of the situation of the respondents as to necessary witnesses.

Mr. Floyd L. Carlisle, Chairman of the Board of the Consolidated Edison Company of New York, Inc., who had been in charge of the labor negotiations and policies of the respondents, and whose statements to the employees had been referred to by practically every witness called by the Government, was and is in Europe, due to return to the United States on July 5th. Mr. Carlisle had not gone to France on a vacation or holiday, but to attend a meeting of the Executive Committee of the World Power Conference, of which he is a member, along with Mr. O. C. Merrill, Secretary of the Federal Power Commission, who is also secretary, we believe, of the World Power Conference. In 1936, the World Power Conference met in Washington, upon the invitation of the United States Government; and Mr. Carlisle and the respondents cooperated in the meeting and the entertainment of the delegates to the Conference from other lands. At the time Mr. Carlisle sailed, there seemed to be no prospect that the pending case would be concluded before his return.

Furthermore, Mr. Harold Dean, vice-president of the respondent New York and Queens Electric Light and Power Company and in charge of its engineering department, was in Milwaukee, Wisconsin, last week, to attend the annual

meeting of the American Institute of Electrical Engineers, with which he is identified. Mr. Dean was and is the necessary witness for the respondent New York and Queens Electric Light and Power Company, as to the alleged discharge of five of the six employees alleged to have been let out for labor activities, in 1935 and early 1936. Mr. Dean's presence in New York could not possibly have been secured last Thursday or Friday. At the time he left for Milwaukee, counsel for the respondents had no reason whatever to anticipate that the case would be concluded before his return, as proved to be the case. His testimony was and is indispensable to the respondents' case.

After telephonic consultation with representatives of your Board in Washington, the Trial Examiner reported that he could not grant an adjournment for receiving the testimony of any witness except Mr. Carlisle. He recessed the hearing until July 6th for that sole purpose. He reserved decision until July 6th on the question whether or not the testimony of Mr. Dean or any other witnesses (beside Mr. Carlisle) would be taken on July 6th or any other adjourned date. The Trial Examiner granted permission to respondents' counsel to present the matter meanwhile to your Board.

As the matter stands, the respondents may be denied all opportunity to present testimony in relation to the six alleged discharges of employees, as well as other pertinent matters in rebuttal, and will be limited to the testimony of Mr. Carlisle, who cannot testify upon the factual matters to be covered by Mr. Dean and others.

We respectfully submit that the situation does not warrant such a precluding of the respondents from a fair and full opportunity to present their case, in rebuttal to that presented by the Board in 1301 pages of testimony. Particularly is that so, in view of the fact that the question whether your Board has jurisdiction in the premises is as yet wholly undetermined. The respondents and their counsel have cooperated fully in the development and presentation of facts which may be pertinent to your Board's final decision. The respondents' opportunity to present their case ought not to be denied.

Very truly yours, Whitman, Ransom, Coulson & Goetz, Attorneys for the Respondents.

National Labor Relations Board,
Washington, D. C.

July 2, 1937.

J. Warren Madden, Chairman. Edwin S. Smith. Donald Wakefield Smith.

Whitman, Ransom, Coulson & Goetz, 40 Wall Street, New York, N. Y.

Re Consolidated Edison Co.

Case No. II-C-224

GENTLEMEN:

We acknowledge receipt of your letter of June 28 requesting permission to introduce testimony in addition to that to be given by Mr. Carlisle on July 6. The Board has considered your request, and directed me to inform you that it will permit Mr. Harold Dean to testify on July 6, as well as Mr. Carlisle, but that these are the only two witnesses who will be permitted to testify on your behalf at that time. The Board is of the opinion that any other witnesses whom you may have desired to produce should have been produced upon completion of the Board's case.

Very truly yours, (Signed) Benedict Wolf, Secretary.

[Letterhead of Whitman, Ransom, Coulson & Goetz]

July 6, 1937.

Re Complaint of Regional Director for Second Region of National Labor Relations Board v. Consolidated Edison Company of New York, Inc., et al. (Case No. II C-224)

National Labor Relations Board, Washington, D. C.

GENTLEMEN:

Your letter of July 2nd, in reply to our letter of June 28th, is received, in relation to the above case.

We regret your ruling that witnesses other than Messrs. Carlisle and Dean may not be heard in behalf of the respondents.

On the afternoon of June 24th, the case in behalf of the Board unexpectedly was closed, without the calling of many witnesses who had been notified to attend. Because

of the absence of Messrs. Carlisle and Dean, counsel for the respondents were obliged to ask for a recess until Mr. Carlisle returned to the United States (on July 5th).

In adjourning hearings to July 6th to receive Mr. Carlisle's testimony and in reserving decision whether the testimony of any other witnesses would be taken on July 6th, the Trial Examiner fixed no intermediate date for the receiving of the testimony of any other witnesses. It was stated, in behalf of the respondents, that any such witnesses would be few and their testimony brief, less than half a day; and it did not seem to anyone that a session should be intermediately held to receive their testimony.

As the matter stands, the respondents are foreclosed; and your Board will not have the facts before it which are necessary for a fair and full determination on the merits. The Government's case began on June 3rd and was closed on June 24th. The respondents are allowed less than one day.

Many of the matters on which respondents wish, and were prepared, to present testimony were matters brought into the case at all only by amendments of the complaint, allowed during the hearings, the last of them today. For example: The termination of the employment of Stephen Solosy was not in the charge or in the complaint, and was brought in only by amendment. Respondents particularly wished to present to the Board the facts as to this matter.

The respondents respectfully except to the ruling which prevents them from placing the facts before the Board on many matters within the scope of the proceeding as broadened by amendments of the complaint during the hearings.

Very truly yours, Whitman, Ransom, Coulson & Goetz.

[Letterhead of National Labor Relations Board]

July 8, 1937.

Whitman, Ransom, Coulson & Goetz, 40 Wall Street, New York City.

Re Consolidated Edison Company of New York, Inc., et al.
Case No. II-C-224

GENTLEMEN:

We acknowledge receipt of your letter of July 6th regarding the above case, and note your remarks concern-

ing your inability to present the witnesses you desired to present, other than Mr. Dean and Mr. Carlisle.

It is our understanding that at the close of the hearing on June 24th, you expressed no desire to proceed with any witnesses other than the two above mentioned, nor were you refused at that time an opportunity to proceed with the case and call whomever you desired to examine.

Furthermore, we are informed that the Trial Examiner suggested to you at the close of the hearing on July 6th that you call witnesses in addition to Dean and Carlisle if you desired, with the understanding that a record of their testimony would be made and you could apply to the Board to have the record of that testimony made a part of the official record.

I shall be glad to learn if my understanding of the situation is incorrect.

Very truly yours, Benedict Wolf.

[Letterhead of Whitman, Ransom, Coulson & Goetz]

July 19, 1937.

Re Complaint of Regional Director for Second Region of National Labor Relations Board v. Consolidated Edison Company of New York, Inc., et al. (Case No. II C-224)

Mr. Benedict Wolf, National Labor Relations Board, Washington, D. C.

DEAR SIR:

Within limits of time and ability in the heat and humidity prevailing, I have devoted myself to the brief in behalf of the respondents, in the above-indicated proceeding, and have not sooner replied to your letter of July 8th, as to what took place before the Trial Examiner. Probably no useful purpose will be served by further correspondence about the matter, but I wish to comply with the request of the last paragraph of your letter.

Unfortunately, the stenographic transcript is not complete, as to all that took place on June 24th and July 6th, the two days referred to in your letter. As the official record shows, there were statements "off the record," on both days.

As the official record shows (S. M. 1416), the closing of the Board's testimony on June 24th was unexpected. A considerable number of witnesses whose attendance had been required were not called to the stand; otherwise the Board's case would have lasted a week more, and probably no question as to the absence of witnesses for the respondents would have arisen. Even with the termination of testimony for the Board, counsel for the Board wished to, and did, keep its case open until July 6th (S. M. 1414-15), for motions and for documentary evidence.

On June 24th, I did not know, and fairly could not be expected to know, what testimony and what witnesses I would wish to produce. Hearings had been in progress since June 10th; some twenty-eight witnesses had been called by the Board; seven Companies were involved as respondents. I did know that two of the necessary witnesses (Messrs. Carlisle and Dean) were away, Mr. Carlisle being out of the country on quasi-public business.

So I then made my application, in behalf of a fair presentation of the respondents' case, for "a recess until July 6th, at which time the remaining data desired by Mr. Moscovitz will be produced, any desired motions on either side may be made and the respondents may proceed and will proceed with any testimony in their behalf" (S. M. 1416).

At no time did I indicate that Messrs. Carlisle and Dean were or would be the only witnesses whom any of the seven respondents would wish to call; my application was for whatever testimony (S. M. 1415, 1416, 1417, 1420, 1421) seemed to be needed, upon an examination of the record. I asked leave to present our case "through such few witnesses" (S. M. 1420) as respondents needed to call.

In response to a question from the Trial Examiner, I said that I thought "that the direct examination of all witnesses in behalf of the respondents would not occupy more than a day. My personal impression is that it will occupy less" (S. M. 1421).

The Trial Examiner then ruled (S. M. 1421):

"Trial Examiner Gates: The hearing may be adjourned until the 6th of July for the purposes of taking the testimony of Mr. Carlisle. *I will reserve decision as to taking any further testimony.*

"In the meantime, respondents, if they see fit, may petition the Board for permission to introduce testimony other

than that of Mr. Carlisle in compliance with the statement you just made. * * *

"Judge Ransom: I understand that in any event, on that date, that Mr. Moscovitz and I each have a right to make any motions that we see fit and that this additional data which Mr. Moscovitz has specified on the record will be supplied, and that he may offer it if he wishes and that the testimony of Mr. Carlisle may be offered on that date under Your Honor's ruling, and that the question of whether I am to be permitted to offer any other witnesses on that date and have such testimony received is reserved for determination at that time, and I state that it is my present intention, meanwhile, to present the matter to the consideration of the Board, so that if they wish to give any further instructions to you as Trial Examiner, that may take place.

"Trial Examiner Gates: The hearing is adjourned until 10:00 A. M., July 6th)."

There was no fixing of any intermediate time for the receiving of the testimony of Mr. Dean or any other witnesses for respondents. Mr. Dean was to be back in town in the week following June 24th. Such a course was discussed, "off the record," as among the possibilities; but nothing was done about it. My belief then and now is that it was generally understood and deemed to be convenient and desirable that as the hearings were to go over to July 6th anyway, the testimony of any other witnesses for the respondents could as well be taken then, as they would be few in number and their testimony relatively short, as compared with the many days taken for the Board's case.

You are in error, I am sure, in suggesting that the Trial Examiner suggested to me, on July 6th, that I might call other witnesses to the stand (aside from Messrs. Carlisle and Dean), have their testimony taken thus informally, and apply to have it included in the official record. Such a suggestion was made by me, in an effort to have the testimony taken. At S. M. 1580, I said:

"Judge Ransom: Won't your Honor do this, just quietly take this testimony and if the Board does not want to consider it, why, about all that anybody is out of pocket is paying for the minutes and they won't be long and we won't take up much of your Honor's time, and I think the Board

would rather have the testimony than not have it, because somebody, I say with all due deference, I think somebody will be sending the case back to take this testimony and I would rather take it this week than during the Christmas holidays."

This suggestion was not accepted in behalf of the Board, although I had stated that the testimony would be "short" and the witnesses "few" (S. M. 1577). The record shows no ruling upon it. The suggestion was not very feasible, anyway, as was pointed out in the "off the record" conference which followed. The Board had limited the taking of testimony to that of Messrs. Carlisle and Dean. So I proceeded to take my exception to the limitation of the testimony, and to make an offer of proof (S. M. 1581 et seq.).

Very truly yours, Wm. L. Ransom.

[Letterhead of National Labor Relations Board]

July 22, 1937.

William L. Ransom, Esquire, Whitman, Ransom, Coulson & Goetz, 40 Wall Street, New York City.

Re Consolidated Edison Co. Case No. II-C-224

DEAR MR. RANSOM:

I acknowledge receipt of your letter of July 19 regarding the above matter and have noted its contents. I agree with you that no useful purpose will be served by further correspondence about the matter.

Very truly yours, (Signed) Benedict Wolf, Secretary.

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

No. —

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; International Brotherhood of Electrical Workers, Local Union No. B-825; International Brotherhood of Electrical Workers, Local Union No. B-839; International Brotherhood of Electrical Workers, Local Union No. B-832; International Brotherhood of Electrical Workers, Local Union No. B-826; International Brotherhood of Electrical Workers, Local Union No. B-828; International Brotherhood of Electrical Workers, Local Union No. B-829; and International Brotherhood of Electrical Workers, Local Union No. B-830, the said International Brotherhood of Electrical Workers and each and all of its said Local Unions aforesaid being Affiliates of the American Federation of Labor, Petitioners,

vs.

THE NATIONAL LABOR RELATIONS BOARD, Respondent

PETITION TO REVIEW AND SET ASIDE A FINAL ORDER OF THE NATIONAL LABOR RELATIONS BOARD—Filed November 22, 1937

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

International Brotherhood of Electrical Workers; International Brotherhood of Electrical Workers, Local Union No. B-825; International Brotherhood of Electrical Workers, Local Union No. B-839; International Brotherhood of Electrical Workers, Local Union No. B-832; International Brotherhood of Electrical Workers, Local Union No. B-826; International Brotherhood of Electrical Workers, Local Union No. B-828; International Brotherhood of Electrical Workers, Local Union No. B-829; and International Brotherhood of Electrical Workers, Local Union No. B-830, the above-named Petitioners, being aggrieved by the said Final Order of said National Labor Relations Board aforesaid, pursuant to authority conferred upon them by Section 10 (f) of the National Labor Relations Act, enacted by the

Seventy-fourth Congress of the United States, approved July 5, 1935 (49 Stat. 10, 29 U. S. C. A. Sections 151, et seq.), respectfully pray this Honorable Court to review and set aside said Final Order entered and issued on November 10, 1937, by said National Labor Relations Board, in a proceeding entitled In the Matter of Consolidated Edison Company of New York, Inc., and its Affiliated Companies (hereinabove named) and United Electrical and Radio Workers of America, Affiliated with the Committee for Industrial Organization, and designated upon the Records of said Board as Case No. C-245.

In support of said Petition, your Petitioners respectfully show:

First. Your Petitioners, the aforesaid several Local Unions No. B-825, No. B-839, No. B-832, No. B-826, No. B-828, No. B-829, No. B-830, respectively, are, each and all lawfully organized, existing and operating Labor Organizations of Wage Workers, and Constituents of the said International Brotherhood of Electrical Workers, organized, existing and operating in and throughout the several States of the United States and various Provinces of the Dominion of Canada, and particularly in the Southern District of the State of New York, in and throughout which said Southern District this Honorable Court has and exercises its lawful jurisdiction, each of said several and respective Local Unions aforesaid and their several and respective memberships of Wage Workers being subject to the jurisdiction and laws and usages of said International Brotherhood of Electrical Workers as a constituent part thereof.

The Petitioner, International Brotherhood of Electrical Workers is a lawfully-organized and existing Labor Organization with jurisdiction over each and all of its said Local Unions and Constituents, being the Petitioners aforesaid, each of said Local Unions being composed of wage workers subject to the jurisdiction, laws and usages of said International Brotherhood of Electrical Workers, as hereinabove stated.

Said International Brotherho-d of Electrical Workers, Local Union No. B-825, is composed of Electrical Wage Workers in the employ and service of the Brooklyn Edison Company, Inc., an affiliated company of said Consolidated

Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing electrical energy for light and power in the State of New York and within the jurisdiction of this Honorable Court,

Said International Brotherhood of Electrical Workers, Local Union No. B-839 is composed of electrical wage workers in the employ and service of the New York and Queens Electric Light and Power Company, an affiliated company of said Consolidated Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing electrical energy for light and power in the State of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-832, is composed of Electrical Wage Workers in the employ and service of the Westchester Lighting Company and The Yonkers Electric Light and Power Company, affiliated companies of said Consolidated Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing electrical energy for light and power in the State of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-826, is composed of wage workers in the employ and service of the New York Steam Corporation, an affiliated company of said Consolidated Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing steam for heating and other purposes in the City and State of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-828, is composed of electrical wage workers in the employ and service of the Consolidated Telegraph and Electrical Subway Company, an affiliated company of said Consolidated Edison Company of New York, Inc., conducting and carrying on its business of providing race-ways for electrical equipment in the City of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-829, is composed of electrical wage workers in the employ and service of the Consolidated Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing electrical

energy for light and power in the State of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-830, is composed of wage workers and employes in the employ and service of the Consolidated Edison Company of New York, Inc., in generating and distributing gas for light and power in the State of New York and within the jurisdiction of this Honorable Court.

Second. That the respondent, National Labor Relations Board, is an administrative Board created by Act of the Seventy-fourth Congress of the United States, approved July 5, 1935, entitled "An Act to Diminish the Causes of Labor Disputes Burdening or Obstructing Interstate and Foreign Commerce, to Create a National Labor Relations Board, and for other Purposes", and is hereinafter referred to as the "National Labor Relations Act".

Third. That this Petition is filed under the provisions of sub-division (f) of Section 10 of said National Labor Relations Act.

Fourth. That on the twenty-eighth day of May, 1937, the aforesaid Brooklyn Edison Company, Inc., acting through W. P. Holcombe, its Vice President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-825 of International Brotherhood of Electrical Workers, acting through its President, Henry A. Clasen, and a Committee representing said Local Union, entered into an Agreement dated and effective May 28, 1937, with certain Riders attached thereto executed June 14, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, May 28, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-825 entered

into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the electrical wage workers and employes in the service and employ of said Brooklyn Edison Company, Inc., which said Agreement, so duly and lawfully authorized and entered into by said large majority of said electrical wage workers and employes of said Brooklyn Edison Company, Inc., was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said electrical wage workers and employes, in whose behalf said Agreement was made.

That on the first day of June, 1937, the aforesaid New York and Queens Electric Light and Power Company, acting through L. A. Coleman, its Executive Vice President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-839 of International Brotherhood of Electrical Workers, acting through a Committee representing said Local Union, the members of said Committee being P. J. Carey, George F. Sutton, Jr., and Michael J. Pecora, entered into an Agreement dated and effective June 1, 1937, with certain Riders attached thereto executed June 14, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 1, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extention thereof, of its desire to terminate the same. The said Local Union No. B-839 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the electrical wage workers and employes in the service and employ of said New York and Queens Electric Light and Power Company, which said Agreement, so duly and lawfully authorized and

entered into by said large majority of said electrical wage workers and employes of said New York and Queens Electric Light and Power Company, was in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said electrical wage workers and employes, in whose behalf said Agreement was made.

That on the twenty-eighth day of May, 1937, the aforesaid Westchester Lighting Company and the Yonkers Electric Light and Power Company, acting through E. P. Prezzano, the President for each of the respective two companies, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-832 of International Brotherhood of Electrical Workers, acting through Fred A. Ungerer, its Temporary President, Edward F. Hayde, its Temporary Vice President, and Edmund J. Quain, its Temporary Financial Secretary, entered into an Agreement dated and effective May 28, 1937, with certain Riders attached thereto executed June 14, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, May 28, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-832 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the electrical wage workers and employes in the service and employ of said Westchester Lighting Company and The Yonkers Electric Light and Power Company which said Agreement, so duly and lawfully authorized and entered into by said large majority of said electrical wage workers and employes of said Westchester Lighting Company and The Yonkers Electric Light and Power Company, was, in

all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said electrical wage workers and employes, in whose behalf said Agreement was made.

That on the sixteenth day of June, 1937, the aforesaid New York Steam Corporation, acting through its President, David C. Johnson, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-826 of International Brotherhood of Electrical Workers, acting through its President, William Wuest, its Vice President, Frank White, and its Recording Secretary, Henry J. Parker, entered into an Agreement dated and effective June 16, 1937, with certain Riders attached thereto executed June 16, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 16, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-826 entered into and executed as aforesaid the said Agreement duly and lawfully authorizd by and representing a large majority of the wage workers and employes in the service and employ of said New York Steam Corporation, which said Agreement, so duly and lawfully authorized and entered into by said large majority of said wage workers and employes of said New York Steam Corporation, was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial in all the particulars to which said Agreement appertains, to said wage workers and employes, in whose behalf said Agreement was made.

That on the twenty-fourth day of June, 1937, the aforesaid Consolidated Telegraph and Electrical Subway Company,

acting through E. S. Callahan, its President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-828 of International Brotherhood of Electrical Workers, acting through its President, Stephen Donohue, its Vice President, William Carey, and its Recording Secretary, Joseph Daly, entered into an Agreement dated and effective June 24, 1937, with certain Riders attached thereto executed June 24, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lock-outs, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 24, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-828 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the wage workers and employes in the service and employ of said Consolidated Telegraph and Electrical Subway Company, which said Agreement, so duly and lawfully authorized and entered into by said large majority of said wage workers and employes of said Consolidated Telegraph and Electrical Subway Company, was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said wage workers and employes, in whose behalf said Agreement was made.

That on the fifteenth day of June, 1937, the aforesaid Consolidated Edison Company of New York, Inc., acting through R. H. Tapscott, its President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-829 of International Brotherhood of Electrical Workers, acting through a Committee composed of Joseph J. Delvac, William J. Eitelbach and E. F. Galschjodt,

entered into an Agreement dated and effective June 15, 1937, with certain Riders attached thereto executed June 15, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 15, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-829 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the electrical wage workers and employes in the service and employ of said Consolidated Edison Company of New York, Inc., which said Agreement, so duly and lawfully authorized and entered into by said majority of said electrical wage workers and employes of said Consolidated Edison Company of New York, Inc., was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said electrical wage workers and employes, in whose behalf said Agreement was made.

That on the fifteenth day of June, 1937, the aforesaid Consolidated Edison Company of New York, Inc., acting through R. H. Tapscott, its President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-830 of International Brotherhood of Electrical Workers, acting through a Committee composed of George T. Parker, Joseph A. Fisher and Frederick G. Buchner, entered into an Agreement dated and effective June 15, 1937, with certain Riders attached thereto executed June 15, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and

outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 15, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-830 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the wage workers and employes in the service and employ of said Consolidated Edison Company of New York, Inc., which said Agreement, so duly and lawfully authorized and entered into, was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said wage workers and employes, in whose behalf said Agreement was made.

True and accurate copies of each of the several Agreements above respectively referred to are filed with and as part of this Petition, marked "Petitioners' Exhibit No. 1."

Fifth. Your Petitioners respectfully show that as of the approximate time when said Agreements were entered into in completed form, and more particularly on or about June 29, 1937, the number of employes eligible to membership in each of said respective Local Unions of said International Brotherhood of Electrical Workers, the total membership, the percentage of eligibles, the number of paid-up members, the number of cards signed, in each of said respective Local Unions, were as the same are particularly set forth in an Exhibit marked and known as "Respondent's Exhibit No. 16" and introduced in evidence in the course of the hearing before the Trial Examiner, in said matter of Consolidated Edison Company of New York, Inc., and its Affiliated Companies and United Electrical and Radio Workers of America, etc., before the National Labor Relations Board, Second Region, Case No. C-245 aforesaid, which said "Respondent's Exhibit No. 16" is here respectfully referred to and prayed to be taken and read by this Honorable Court as part hereof.

Furthermore, the attention of this Honorable Court is respectfully and especially requested to those provisions

and features of said Agreements which indicate and ascertain their scope (Articles I and II), provisions recognizing the special public obligations and responsibilities of said Utility Service Companies and their employes, and providing for procedures assuring against interruptions of the public service, as well as the declared purpose of said Agreements to set up such a system of collective bargaining "as will best promote and improve the economic welfare of employes of the Consolidated Company who are members of the Brotherhood, etc."; the provisions of Articles X, XI and XII of each Agreement providing for adjustment and arbitration of grievances, for the review of discharges of employes, and for the negotiation and, if need be, the arbitration of future contracts as to wages, hours and other working conditions on bases intended to preclude strikes and lockouts; and also notably the favorable, careful and exhaustive provisions for the employes' welfare with reference to hours of employment and working conditions (Article III), vacations (Article IV), and provisions for sickness, disability, superannuation, retirement, etc. of employes (Article VI), all as exceedingly fair, favorable, just and in the beneficial interest of the employes. As to "wages and classifications" (Article V) the Agreements first negotiated between the companies and the committees selected by the employes, through some of said Local Unions, provided for a five percent (5%) increase in the rates of pay of all employes receiving less than five thousand dollars ($5,000.00) a year, excepting those who had already received increases of at least five percent (5%) in 1937; nevertheless, in subsequent negotiations between said Consolidated Edison Company and the Committee chosen by its electrical workers and employes, a further provision for additional wage increases was secured and made in behalf of said workers and employes, and this further provision was attached as a "Rider" to all the Agreements, including those theretofore executed.

The total number of electrical wage workers and employes in the employ and service of said Consolidated Edison Company of New York, Inc., and its said Affiliated Companies, Respondents in said proceeding before National Labor Relations Board, Second Region, aforesaid, and included and embraced by said Agreements hereinabove referred to, at the time said Agreements went into effect, was something over thirty thousand (30,000); and as of the

present time the number of such electrical wage workers and employes is still greater. Each and all of said Agreements have been in operation and effect between said respective Local Unions and said respective Companies ever since their execution, nearly six months ago, and each and all of the same have been and are in operation and effect to the very great and material benefit, advantage and welfare of said respective Local Unions and the Membership of each of them, as well as for the very considerable and uninterrupted service, benefit, advantage and welfare of the public, consisting of approximately ten million (10,000,000) persons beneficially served and aided in many material respects by, and in a large measure dependent upon, the public utilities supplied by said Public Service Companies and the said electrical workers and employes engaged in their service.

Sixth. That on the twelfth day of May, 1935, the Respondent, the National Labor Relations Board, through Mrs. Elinor M. Herrick, its Regional Director for the Second Region, issued and filed, and thereafter served its Complaint upon the Respondents named in said Complaint, namely the Consolidated Edison Company of New York, Inc., and its Affiliated Companies, Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation and Consolidated Telegraph and Electrical Subway Company, in the said matter of Consolidated Edison Company of New York, Inc., and its said Affiliated Companies, Respondents and United Electrical and Radio Workers of America—before the National Labor Relations Board, Second Region, aforesaid.

The said Complaint stated in substance: that it had been charged by the United Electrical and Radio Workers of America, Affiliated with the C. I. O. that the Consolidated Edison Company of New York, Inc., and its Affiliated Companies aforesaid, the Respondents, have been engaged in and are now engaging in certain unfair labor practices affecting commerce as defined in said National Labor Relations Act; and upon said charge, the National Labor Relations Board, by the Regional Director for the Second Region, alleges the several and various matters set forth in twenty-four consecutive paragraphs constituting said Complaint, as follows:

Paragraphs numbered 1-16, inclusive, embrace only allegations purporting to charge that the Respondent Company and its said Affiliate Companies were and are engaged in commerce as defined by and within the meaning of said National Labor Relations Act. The next following paragraph of said Complaint, namely paragraph 17, alleges that said Respondent Companies employ and have employed industrial spies or under-cover operatives to disclose to the Respondents the activities of their employes in and on behalf of Labor Organizations, thereby interfering with the right of their employes to form, join or assist Labor Organizations of their own choosing, or to engage in concerted activities for their mutual aid and protection, and thereby have engaged and are engaging in unfair labor practices within the meaning of Section 8 (1) of said Act. Paragraph numbered 18 alleges that the Respondent Companies, on or about November 29, 1935, discharged and refused to reinstate certain employes named Wersing, Grulich and Wagner, because they joined and assisted a Labor Organization known as Brotherhood of Utility Employes, Local 103, and engaged with other employes of the Respondent Companies in activities for their mutual aid and protection. Paragraph 19 alleges that the Respondent Companies, on or about June 19, 1936, discharged and refused to reinstate two employes named Kennedy and Emler, because they engaged with other employes in activities for their mutual aid and protection. Paragraph 20 alleges that by said discharge of said five employes aforesaid, the Respondent Companies interfered with, restrained and coerced their employes in the exercise of rights guaranteed in Section 7 of said Act, and by such discharges have engaged and are engaging in unfair labor practices within the meaning of Section 8 (1) of said Act. Paragraph 21 of said Complaint alleges that by the discharge of said five employes aforesaid, the Respondent Companies discriminated and are discriminating in regard to the hire and tenure of employment of said five employes, and discouraged and are discouraging membership in or assistance to Labor Organizations, and thereby engaged and are engaging in unfair labor practices within the meaning of Section 8 (3) of said Act. Paragraph 22 of said Complaint alleges that the Respondent Companies have, since April 12, 1937, interfered and are interfering with, restraining and coercing their employes in the exercise of their rights to form, join or assist Labor Organiza-

tions of their own choosing, and are contributing financial or other support to the International Brotherhood of Electrical Workers by (1) allowing employes of the Respondents to solicit membership in said Labor Organization during working hours and on the Respondents' property, (2) compensating such employes while engaged in such solicitation, (3) furnishing office space and other financial assistance to such solicitors, while refusing such privileges or assistance to the United Electrical and Radio Workers of America, Local 1212, and by coercing their employes to join or assist the International Brotherhood of Electrical Workers; and "did thereby and are thereby engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of said Act." Then, follow the final two paragraphs of said Complaint, to which the attention of this Honorable Court is respectfully requested, which said paragraphs are as follows:

"23. The activities of the respondents set forth above in *paragraphs '16' to '21,' inclusive,* occurring in connection with the operations of respondents described above in *paragraphs '1' to '16,' inclusive,* have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes hindering and obstructing commerce and the free flow of commerce.

"24. *The aforesaid acts of the respondent enumerated above in paragraphs '16' to '21,' inclusive, constitute unfair labor practices* affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act."

The said Complaint then concludes as follows:

"Wherefore the National Labor Relations Board on the 12th day of May, 1937, issues its complaint *against the Consolidated Edison Company of New York, Inc., and its affiliated companies, Brooklyn Edison Company, Inc., New York & Queens Electric Light & Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph & Electrical Subway Company, Respondents herein.*"

Appended to said Complaint was a "*Notice of Hearing*" assigned to take place on June 1, 1937, at ten o'clock A. M.,

at 45 Broadway, New York, New York. The said Complaint, with said Notice of Hearing, was signed on May 12, 1937, by Mrs. Herrick, Regional Director for the Second Region. On May 25, 1937, Mrs. Herrick, Regional Director, signed and caused to be served upon the said Respondent Companies an "*Amended Notice of Hearing*" postponing the hearing to the third day of June, 1937, at ten o'clock A. M., at the Auditorium of the New York County Lawyers Association, 14 Vesey Street, New York, New York.

Seventh. Your Petitioners, further, respectfully show that the said Complaint as first and originally issued by said Board through its said Regional Director and served upon said Respondent Companies did not allege that the matters and facts stated in paragraph 22 affected interstate commerce, but, on the contrary, paragraphs 23 and 24 of said original Complaint, hereinabove literally recited, specifically alleged that the activities of the Respondents set forth in paragraphs 16 to 21, inclusive, occurring in connection with the operations of Respondents described in paragraphs 1 to 16, inclusive, have a close, etc., relation to commerce among the several States and tend to lead to labor disputes hindering and obstructing commerce and its free flow; and that the aforesaid acts of the Respondent enumerated above in paragraphs 16 to 21, inclusive, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (3) and Section 2, subdivisions (6) and (7) of said Act. In other words, the statements in paragraph 22 of favoritism upon the part of the Respondent Companies toward the International Brotherhood of Electrical Workers, are not embraced in or connected with the substantive and essential charges in the Complaint, but are plainly omitted therefrom. Said original Complaint and the Notice of Hearing and the Amended Notice of Hearing, of and upon said Complaint, were never served by said National Labor Relations Board or by its Regional Director for the Second Region, or caused by them or either of them to be served, upon your Petitioner, the International Brotherhood of Electrical Workers, at its well and generally known Office in the International Brotherhood of Electrical Workers Building at No. 1200 Fifteenth Street, N. W., in Washington, District of Columbia, or at any of its offices, nor upon any of your Petitioners, at said several Local Unions, hereinabove respectively mentioned, as com-

posed of electrical workers and employes in the service of or in any manner associated or connected with said Consolidated Edison Company of New York, Inc., or any of its said Affiliated Companies. On the contrary, said original Complaint, Notice of Hearing and Amended Notice of Hearing were mailed, or caused to be mailed by said Board and its said Regional Director to the Office, No. 130 East Twenty-fifth Street, New York City, New York, of Local Union No. 3, composed of employes of electrical contractors, and having no connection or association with any of said Respondent Companies, and having not the slightest connection or concern with any of the matters or charges alleged in said Complaint or with any of said Local Unions of electrical workers and employes in the employ and service of any of said Respondent Companies, and having no interest in, relation to, or concern with the said Agreements entered into by and between said respective Respondent Companies, said International Brotherhood of Electrical Workers, and said respective Local Unions aforesaid, or in or with the relations between said International Brotherhood and said Local Unions and said Respondent Companies. At said Office, 130 East Twenty-fifth Street aforesaid, of said Local Union No. 3, an alleged service of said Complaint was attempted to be acknowledged by one D. Kaplan, a member of said Local Union No. 3, and not an officer, representative or agent of your Petitioner, International Brotherhood of Electrical Workers, or of any of your Petitioners herein, and not connected in any way with any of said Respondent Companies, and not involved or interested in or concerned or connected with any of the matters, acts or things mentioned or complained of in said Complaint; and not authorized, competent or qualified, in any respect or manner, to accept or acknowledge service of any legal process or of any proceeding for or upon the part or behalf of said International Brotherhood of Electrical Workers or any of said Local Unions, the Petitioners herein. The Amended Notice of Hearing of May 25, 1937, was also mailed to said office of said Local No. 3 at 130 East Twenty-fifth Street aforesaid.

Subsequently, said original Complaint, which, as aforesaid, omitted the allegations of paragraph 22 aforesaid from the material and substantial complaint which it pre-

ferred against said Respondent Companies, was for the first time, in a Third Amended Complaint, amended so as to make the allegations in paragraph 22 referable to interstate commerce and to alleged unfair labor practice proscribed by the Act. This was the first charge or accusation, so as aforesaid made in its Third Amended Complaint, by the said Board against any of the Respondent Companies of any alleged unfair practice under said Act with reference to the International Brotherhood of Electrical Workers; and this was done, for the first time, as aforesaid, after the hearing of and upon said Complaint, had been in progress for a number of days and the most important testimony for the Board in the Record, particularly that upon which the Labor Board in its said final decision and order mostly relied, namely the testimony of the C. I. O. witness, Harold Straub, and certain others, had been taken in several sessions of the hearing conducted by the Trial Examiner. Reference is here respectfully made to pages 518-523 of the Record of the proceedings at the hearing before the Trial Examiner, a true copy of which said pages, for the convenience of this Honorable Court, is filed herewith marked "Petitioners' Exhibit No. 2."

Eighth. Your Petitioners here, further, respectfully show that following said Amendment of said Complaint, as shown by said Third Amended Complaint, and by which said Amendment, for the first time the reference in said paragraph 22 to the alleged attitude and action of said Respondent Companies toward said International Brotherhood of Electrical Workers was brought within and made a part of said Complaint of unfair practices upon the part of said Respondent Companies under said Act, there was no service whatsoever of said Complaint as so amended, or of any notice of hearing thereupon, made, or caused or attempted to be made, by said Board, or its said Regional Director for the Second Region, or its said Trial Examiner conducting said hearing, upon your Petitioner, International Brotherhood of Electrical Workers, or upon any of your Petitioners, said respective Local Unions of electrical workers and employes in the employ and service of said Respondent Companies, respectively, or any of them.

And your Petitioners respectfully show that upon and in the situation, so as above particularly described and ascertained, and without any change therein and without any amendment or supplementary proceeding by way of notice

to or service of any proceeding whatever upon your Petitioners, or any of them, the said hearing proceeded until it was finally closed before said Trial Examiner, and on or about September 29, 1937, by Order of said National Labor Relations Board, was transferred to it at Washington, D. C.; that from the inception, issuing and filing of said original Complaint in said proceeding until said close of the hearing and proceeding before said Trial Examiner, and until after said proceeding had been, by said Order of the Board, "transferred and continued" before it at Washington, no notice thereof, and no copy of said Complaint and Charge, or of any Amended Complaint, and no Notice of Hearing or Amended Notice of Hearing upon any Amended Complaint, was ever served or caused to be served by said National Labor Relations Board or by its Regional Director for said Second Region, or by its said Trial Examiner, upon any of your Petitioners or upon any officer or official representative of any of them.

After said transfer by said Order of said Board of September 29, 1937, of said proceeding to and before it, not any of the Petitioners received any word or intelligence from said Board until on the tenth day of November, 1937, the following communication from said National Labor Relations Board, Washington, D. C., dated said November 10, 1937, was received from Benedict Wolf, Secretary of said Board, to wit:

"National Labor Relations Board

Washington, D. C., November 10, 1937.

"Mr. Daniel W. Tracy, 1200 15th Street, N. W., Washington, D. C.

"Re Consolidated Edison Company, Inc., and Its Affiliated Companies. Case No. C-245

"Dear Sir:

"We are enclosing herewith a copy of the Board's Decision and Order in the above-entitled case.

"Very truly yours, (Signed) Benedict Wolf, Secretary.

"N. L. R. B. 92."

Said communication, as stated therein, was accompanied by a copy of said Board's said Decision and Order, ren-

dered, and entered and issued by it on said tenth day of November, 1937. The said Communication and Decision and Order of said Board are filed herewith as part hereof marked "Petitioners' Exhibit No. 3."

Ninth. Your Petitioners, furthermore, respectfully show that in said Complaint and Proceeding before said National Labor Relations Board, Case No. C-245 aforesaid, the only Defendants or Respondents in said cause, were and are the several Companies named therein, as aforesaid, as Respondents. The other party named in the title thereto, namely the United Electrical and Radio Workers of America, Affiliated with the Committee for Industrial Organization, preferred the charges upon which said Complaint was based. The said proceeding upon said Complaint was instituted and conducted solely and only against the Respondent Companies, aforesaid, therein. Not one of your Petitioners was made a party, defendant or respondent, to said proceeding. Not one of them was, in law or in fact, a party to said proceeding. Not only did not any one of them receive from said Board, Regional Director or Trial Examiner any copy of the Complaint or of any Amended Complaint or Notice of Hearing or Amended Notice of Hearing therein, but they were not served or affected with any summons, process or requirement whatsoever issued to or laid upon them, according to the Law of the Land and their fundamental and constitutional rights, to appear and defend themselves as parties to said proceeding against any denial, forfeiture, deprivation or destruction of their personal and property rights secured to them by their several respective Agreements aforesaid, heretofore filed herewith as Petitioners' Exhibit No. 1. In other words, at no time was any one of your Petitioners herein ever summoned to appear as a party to said proceeding in any proper, necessary, lawful or constitutional manner, according to the established practice and requirements of all tribunals and courts of justice dealing with and disposing of personal and property rights in accordance with the Law of the Land and the requirements of our Constitutional Systems and particularly of the Constitution of the United States. Nevertheless, and despite the premises, as appears in said Decision and Order of November 10, 1937, of said National Labor Relations Board, and as hereinafter more particularly pointed out, the said personal, property and contrac-

tual rights of your Petitioners were and are lawlessly and ruthlessly abrogated and destroyed by said Order of said Board without any of your Petitioners being made parties to said proceeding, and without even service by said Board or its Regional Director or Trial Examiner of said Complaint or Amended Complaint or Notice of Hearing or Amended Notice of Hearing, upon any of them from the beginning to the end of the hearing and determination of said cause, in violation of the Constitution of the United States and the Amendments thereto specifically protecting and securing to your Petitioners their rights and immunities aforesaid.

Tenth. Your Petitioners respectfully and particularly show that the said Board's said Order of November 10, 1937, peremptorily directs and requires that said Respondent Companies and each of them, cease and desist from:

(f) Giving effect to their said contracts with the International Brotherhood of Electrical Workers, and

(g) Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employes,

thereby abrogating and annulling said Agreements by prohibiting their recognition, effect, performance or fulfilment. The said destructive effects of said Order are further attempted to be enforced by paragraph 2-c thereof directing, as "affirmative action," said Respondent Companies to (c) Post immediately notice to their employes in conspicuous places, through their offices, buildings, plants and places of employment, stating (1) That the respondents will cease and desist in the manner aforesaid; (2) That the respondents' employes are free to join or assist any Labor Organization for the purpose of collective bargaining with the respondents; (3) That the respondents will bargain collectively with any Labor Organization entitled thereto. The said Order not only abrogates and annuls the said contracts between your Petitioners, respectively, and said Companies, respectively, but, in effect, calls for new contracts to be substituted in their place, despite the fact, as your Petitioners respectfully represent, that the said contracts so entered into by your Petitioners are still in effect and operation and will continue to be until the prescribed end of their respective terms.

Eleventh. In contra-distinction from and contrast with the provisions of said Order abrogating and annulling said Agreements by prohibiting their recognition, existence, performance and fulfillment, as shown in the last preceding paragraph hereof, your Petitioners respectfully and particularly direct the attention of this Honorable Court to the impressive fact that said Complaint or Amended Complaint, upon which said Order was entered and issued, did not contain or make the slightest reference to any of the said Agreements so abrogated, stricken down and destroyed by said Order as aforesaid. Nor did said Complaint or Amended Complaint contain or make any reference to or raise any question as to representation of said electrical workers and employes in the employ and service of any of said Respondent Companies for the purpose of collective bargaining with any of said Respondent Companies as employers, such subjects being nowhere in said Complaint or Amended Complaint referred to as in issue or under consideration or subject to adjudication upon or by virtue of said Complaint or Amended Complaint. The said Complaint or Amended Complaint was not brought by said Board or its Regional Director under, nor did it purport by word or intention to be brought under, Section 9 of said National Labor Relations Act, the said Section 9 being nowhere mentioned or referred to in said Complaint or Amended Complaint. The learned Attorney for said Board repeatedly stated during the hearing, as hereinafter set forth, that there was no question of representation involved in said case or proceeding. From the beginning to the end of said Complaint or Amended Complaint there is no statement, charge or intimation and certainly no notice or premonition that the said Agreements or their legality, existence or operation, or any matter of representation for collective bargaining, or collective bargaining at all, were in issue or raised for determination and adjudication by the Board. The specific and particular allegations and charges in and of the said Complaint and Amended Complaint, definitely phrased and ascertained, have been hereinabove fully detailed. As charges of legal offenses, their scope, according to settled and familiar principles, may not be extended beyond their plain and proper import. They raise no such questions, and present no such exceedingly grave and serious matters for determination and adjudi-

cation as the Board in its said Final Order went far out of its way, not only to lug into the case, but to make the very gist and gravamen of the case and the substance and burden of its Order. Your Petitioners, accordingly, respectfully and earnestly complain that the said Complaint and Amended Complaint, upon which said Final Order of said Board was passed, afforded no legal basis or justification for said Final Order in the particular respects hereinabove specially referred to, namely the striking down and cancellation of said Agreements and the determinations and orders with respect to representation, collective bargaining and the substitution of other Agreements for those entered into as aforesaid by your Petitioners with said Respondent Companies, without the slightest reference in said Complaint or Amended Complaint to said serious subject matters which said Order of said Board attempts to dispose of as appears therein.

Twelfth. Your Petitioners also respectfully show unto Your Honors that the said Respondent Companies, before filing their Answer to the Complaint and Amended Complaint in said proceeding before said National Labor Relations Board, Second Region, Case C-245, aforesaid, moved to dismiss said Complaint as well as the Charge therein and terminate said proceeding, upon the grounds that the said National Labor Relations Board had no jurisdiction, power or authority over said Respondents or over the subject matters of said Complaint, Amended Complaint and Charge, and no jurisdiction, power or authority to hear and determine the same, and that the labor practices of said Respondent Companies, alleged in said Complaint, Amended Complaint and Charge, were not shown therein to affect "commerce" within the meaning of said Act; and upon the further ground that such matters and things as were and are so complained of and charged, were and are under the jurisdiction of the State of New York and within the scope and purview of the Legislative Act of said State upon and respecting said subject matters and things so as aforesaid complained of and charged. And by competent deposition duly sworn to, the said Respondent Companies in said Case C-245 verified their Motion aforesaid and showed that they, said Respondent Companies and the electrical workers and employes in their employ and service, and referred to and involved in said Complaint, Amended

Complaint and Charge, were engaged only in intra-state commerce and not in interstate or foreign commerce within the Commerce Clause of the Federal Constitution and within the meaning and effect of said National Labor Relations Act; and also that it had been adjudicated in the United States District Court for the Southern District of New York, that said Respondent Companies were engaged exclusively in intra-state business and not in interstate business and that the conduct and operation of their business did not burden or affect interstate commerce. The determination of said Motion was postponed by said Board and its Trial Examiner by its direction until after the hearing and until the conclusion of said proceeding. The Respondent Companies, reserving their rights with respect to said denial of jurisdiction upon the part of said Board in the premises, reasserted said objection to, and denial of said jurisdiction, upon said grounds, in their Answer to said Complaint.

Your Petitioners respectfully show, upon information and belief, that the said National Labor Relations Board is without jurisdiction, power or authority over said Respondent Companies, and over your Petitioners, electrical wage workers and employes in their service and employ as aforesaid, with respect to any of the matters, things acts or subject matters alleged, charged and complained of in said Complaint, Amended Complaint and Charge in said Proceeding and Case C-245, upon and with respect to which, said National Labor Relations Board passed and entered its said Final Order herein complained of, for, all and singular, the reasons assigned in denial of any such jurisdiction, power and authority in said Board in said Motion to Dismiss, affidavit and Answer of said Respondent Companies hereinabove referred to and particularly for the reason, which your Petitioners allege upon information and belief, that not any of the said Respondent Companies nor your Petitioners as electrical wage workers and employes employed and engaged in their service, are engaged, employed and acting in interstate commerce or foreign commerce within the Commerce Clause of the Constitution of the United States and within the meaning of said term "Commerce" as used and defined in said National Labor Relations Act. Your Petitioners, accordingly, respectfully represent, that said Board, being entirely without jurisdic-

tion, power or authority in the premises, its said Order of November 10, 1937, aforesaid, herein complained of, is unauthorized, unconstitutional, nugatory and void.

Thirteenth. Moreover, your Petitioners respectfully show that said provisions of said Order annulling and destroying said Agreements as aforesaid were not based upon the slightest evidence or supported by any testimony at all in the Record of the Proceedings in said Case before said National Labor Relations Board, that the said several Agreements were not authorized and entered into by a majority of the electrical workers and employes of said respective Respondent Companies; but, on the contrary, the positive testimony, afforded by said "Respondent's Exhibit No. 16," hereinabove referred to, was and is to the effect that said respective Agreements were entered into by large majorities of the electrical workers and employes in said several Respondent Companies.

Fourteenth. Your Petitioners, furthermore, respectfully show that it was on various occasions repeatedly stated by the learned counsel for the Board and its Regional Director, in said hearing and proceeding before said Trial Examiner, on behalf of the Board, that no question of representation was or is involved in said Complaint or said proceeding thereon (Rec. 190, 521). The said Complaint manifestly was not and is not based in any respect upon Section 9 of said National Labor Relations Act. The subject and question of representation for collective bargaining, which the said Order of said Board makes its principal substance and burden, were declared by the said Attorney for the Board eliminated from the case. The said Final Order of the Board, your Petitioners respectfully submit, is not only in disregard and contravention of said declarations and disclaimers upon the part of the Board's own able Counsel, but arrayed against the provisions of the Federal Constitution prohibiting the deprivation of liberty or property without due process of law, and the denial of the equal protection of the laws, and the impairment of the obligation of contracts, is in its despotic defiance of the most valuable rights of the Citizen indefeasibly guaranteed by the Organic Law, a species of dictatorial autocracy of which this Country, fortunately, has seldom, if ever, witnessed the like.

In fine, your Petitioners respectfully represent that, the said Order destroying as aforesaid the property, contracts and personal rights of your Petitioners presents to this Honorable Court the bald spectacle of an administrative tribunal suspending the Constitution of the United States, the Common Law of the Land, the principles of natural justice and the rights and immunities of American citizens, and overturning every landmark of liberty ordered and guarded by law.

Fifteenth. Your Petitioners, moreover, respectfully show that said hearing of said cause before said Regional Director and Trial Examiner on behalf of said National Labor Relations Board was not a fair and lawful one in that almost every variety of unlawful testimony, including hearsay, rumor, remote and secondary reports and conversations, not constituting, in any established or recognized sense, legal evidence, was admitted against said Respondent Companies and also, in the view of said Final Order of said Board, against the valuable and substantial personal and property rights of your Petitioners omitted as legal defendants, although, by law and constitutional guarantee, indispensable parties to any proceeding to deny and destroy their said personal and property rights.

Sixteenth. Your Petitioners respectfully represent that the said Final Order of said National Labor Relations Board passed and entered on November 10, 1937, is illegal, unconstitutional and void for the following reasons:

A. The said National Labor Relations Board was without jurisdiction, power or authority under the Constitution of the United States and under said National Labor Relations Act to pass or enter said Order, because the Respondent Companies in said proceeding and Case C-245, and your Petitioners as their employes as aforesaid, were not engaged in interstate or foreign commerce, but only in intrastate commerce, within the meaning of the Commerce Clause of the Constitution of the United States and of the term "commerce" in said National Labor Relations Act and, therefore, had no jurisdiction, power or authority over the Complaint, Amended Complaint and Charge, aforesaid, in said Proceeding and Case C-245, or the parties or such matters, things, actions and alleged practices therein mentioned and referred to or over your Petitioners as employes of

said Respondent Companies or their Agreements aforesaid, or their relations with said Respondent Companies in the employment and service of your Petitioners in the business carried on by said Respondent Companies.

B. The said Board may not be and is not legally authorized or empowered to impair, abrogate, annul and destroy existing contracts, as it has attempted by its said Order to annul and destroy the said Contracts of your Petitioners and their personal and property rights therein. Said attempted exercise of power so to destroy contracts and property rights is inhibited by the Law of the Land as expressed in the Constitution of the United States and the Amendments thereto.

C. The Constitution of the United States expressly prohibits the impairment of the obligation of contracts by any of the States of the Union, and the spirit and effect of this inhibition is implicit in the Federal Constitution and the Amendments to it against the Fetleral Government itself.

D. The National Labor Relations Board is without constitutional authority in any proceeding before it to abridge, annul or destroy the contractual, personal or property rights of any citizen, or body of citizens, without lawful notice and without lawfully and actually making, and summoning them as, a party or parties to the proceeding, thus bringing them into Court, as parties to the proceeding, before any judgment or determination may be made therein abridging, denying, impairing or taking away their substantial rights of person and property. These are indefeasible rights and immunities guaranteed by the fundamental law to every citizen in a free land. Said Order of said Board violates these principles to the irreparable injury of these Petitioners.

E. The proceedings before said Regional Director and conducted by said Trial Examiner at and in the hearing of said Complaint were unjudicial, unjust and violative of the basic principles of evidence constituting a part of due process of law, and embraced in the equal protection of the laws, and, as the basis of said Order of said Board of November 10, 1937, were illegal and void.

F. The said Order of said Board of November 10, 1937, as well as the proceedings conducted by said Trial Exami-

ner under the authority and direction of said Regional Director for the said Second Regional District and under the authority of said National Labor Relations Board, constituted an unequal, discriminatory, confiscatory and illegal application and administration of said National Labor Relations Act against these Petitioners, and in deprivation of their personal and property rights, which said application and administration of said Act are, under the Constitution of the United States and the Amendments thereto, illegal, unconstitutional and void.

Seventeenth. The Petitioners respectfully show that if said Order of said National Labor Relations Board of August 30, 1937, be permitted to stand and be carried out as valid, and the said contracts of your Petitioners be set aside and invalidated, and their rights thereunder annulled and destroyed, as aforesaid, they will suffer and sustain irreparable loss, injury and damage, for which they would be without remedy in a Court of Law, and which said loss, injury and damage, your Petitioners respectfully represent, it is proper and lawful for this Honorable Court to prohibit and prevent; and, further, that unless said Final Order be set aside by this Honorable Court, as hereinafter prayed, substantial and irreparable injury to your Petitioners and to their personal and property rights will be unavoidably imposed and inflicted upon them.

Wherefore, your Petitioners respectfully pray this Honorable Court to review the said Decision and Order of November 10, 1937 of said National Labor Relations Board and enter a Decree setting said Order aside as unauthorized, unconstitutional, null and void, and that, pending such review and Decree, said Order may be stayed, and that such

other and further decrees may be made herein as to this Honorable Court may seem just.

And as in duty, etc.

International Brotherhood of Electrical Workers, by D. W. Tracy, International President. International Brotherhood of Electrical Workers, Local Union No. B-825, by John J. Corrigan, Its President. International Brotherhood of Electrical Workers, Local Union No. B-839, by George F. Sutton, Jr., Its President. International Brotherhood of Electrical Workers, Local Union No. B-832, by Fred A. Ungerer, Its Temp. President. International Brotherhood of Electrical Workers, Local Union No. B-826, by William Wuest, Its President. International Brotherhood of Electrical Workers, Local Union No. B-828, by Stephen Donohue. International Brotherhood of Electrical Workers, Local Union No. B-829, by William P. Ganley. International Brotherhood of Electrical Workers, Local Union No. B-830, by John McKeon. Isaac Lobe Straus, Munsey Bldg., Baltimore, Md., Solicitors for the Petitioners. Claude A. Hope and Delafield, Sharne & Marsh, 20 Exchange Place, New York.

Duly sworn to by D. W. Tracy et al. Jurats omitted in printing.

PETITIONERS' EXHIBIT No. 1

Memorandum of Agreement Between Brooklyn Edison Company, Inc., and the International Brotherhood of Electrical Workers, Through Its Local Union No. B825

Effective May 28, 1937

Agreement between Brooklyn Edison Company, Inc. (hereinafter referred to as the "Brooklyn Company"), and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of con-

ducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Brooklyn Company who are members of the Brotherhood and enable the Brooklyn Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted electric service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Brooklyn Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Brooklyn Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Brooklyn Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Brooklyn Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Brooklyn Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40)

hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Brooklyn Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Brooklyn Company or any other Company of the Brooklyn Edison Company, Inc., on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that two weeks'

vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 14, 1937.

W. P. H. J. C. A. D. W. T. H. A. C. P. J. B.
H. J. G. J. M. C.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Brooklyn Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of 5% in the wages to be made, effective July 1, 1937, of all employees receiving less than $5,000 per annum with the exception of those who have received increases between January 1, 1937 and July 1, 1937. Where increases have been made since January 1, 1937 which were less than 5%, they will be increased to equal 5%.

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week; and to provide further that all increases

provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 14, 1937.

Brooklyn Edison Company, Inc., by W. P. Holcombe, Vice President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B825, by H. A. Clasen, Peter J. Bernard, James M. Curry, Haym J. Gill.

Attest: John C. Arnell.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, Etc.

8. The Brooklyn Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lake Farms, Inc., the present medical service, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Brooklyn Company will continue to comply with the United States Social Security Act while this agreement is in effect; unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Brooklyn Company further states (but without modifying the voluntary and non-obligatory character of its provisional Retirement Plan for Employees) its present intention to continue for the term of this contract, without reference to the provisions of the United States Social Security Act, its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b),

(c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

10. The Brooklyn Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Brooklyn Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Brooklyn Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Brooklyn Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Brooklyn Company and the Brotherhood or its members employed by the Brooklyn Company, as to the meaning, application or operation of any provisions of this agree-

ment, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference.

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Brooklyn Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Brooklyn Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Brooklyn Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Brooklyn Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other

matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Brooklyn Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Brooklyn Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose

of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Brooklyn Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Brooklyn Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, subparagraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In witness whereof, Brooklyn Edison Company, Inc., and the Brotherhood and its Local Union have executed this agreement the 28th day of May, 1937.

Brooklyn Edison Company, Inc., by W. P. Holcombe, Vice President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B825, by Henry A. Clasen, President; James M. Curry, Peter J. Bernard, Haym J. Gill.

Attest: John C. Arnell.

Memorandum of Agreement Between New York and Queens Electric Light and Power Company and the International Brotherhood of Electrical Workers, Through Its Local Union No. B839

Effective June 1st, 1937

Agreement between New York and Queens Electric Light and Power Company (hereinafter referred to as the "Queens Company") and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Queens Company who are members of the Brotherhood and enable the Queens Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted electric service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Queens Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Queens Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Queens Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint

or coercion, by the Queens Company of any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Queens Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Queens Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Queens Company or any other Company of the Consolidated Edison

System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936, and prior to January 1, 1937.

Executed, June 14, 1937.
P. J. C. C. F. S., Jr. M. J. P. D. W. T. L. A. C. F. S.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Queens Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars ($5,000.00) per annum, with the exception of those who have received increases between January 1, 1937 and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 14, 1937.

New York and Queens Electric Light and Power Company, by L. A. Coleman, Executive Vice President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B839, P. J. Carey, George F. Sutton, Jr., Michael J. Pecora.

Attest: F. Seinecke.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Queens Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Queens Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Queens Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of

this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

10. The Queens Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Queens Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Queens Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Queens Company, provided that this will

not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Queens Company and the Brotherhood or its members employed by the Queens Company, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Queens Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Queens Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Queens Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the

board. The decision of a majority of the members of the board shall be final and binding upon the Queens Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof, involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and

without just cause, the Queens Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Queens Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Queens Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Queens Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or unemployment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other

party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In witness whereof, New York and Queens Electric Light and Power Company and the Brotherhood and its Local Union have executed this agreement the 1st day of June, 1937.

New York and Queens Electric Light and Power Company, By L. A. Coleman, Executive Vice President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B839, P. J. Carey, George F. Sutton, Jr., Michael J. Pecora.

Attest: F. Seinecke.

Memorandum of Agreement Between New York Steam Corporation and the International Brotherhood of Electrical Workers, Through Its Local Union No. B826

Effective June 16th, 1937

Agreement between New York Steam Corporation (hereinafter referred to as the "Steam Corporation") and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Steam Corporation who are members of the Brotherhood and enable the Steam Corporation efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted steam service to its customers, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Steam Corporation who are members of the Brotherhood

and are engaged in operations essential to the furnishing of steam service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Steam Corporation recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Steam Corporation recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Steam Corporation or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Steam Corporation time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in exces of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day,

October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Steam Corporation to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay, and in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Steam Corporation or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936, and prior to January 1, 1937.

Executed, June 16, 1937.

W. W. F. W. H. J. P. D. W. T. D. C. J.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Steam Corporation, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars ($5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 16, 1937.

New York Steam Corporation, by David C. Johnson, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B826, William Wuest, President. Frank White, Vice President. Henry J. Parker, Rec. Secretary.

Attest: Wm. J. Baldwin, Jr., Secretary.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Steam Corporation will continue in force, for the duration of this agreement but without commitment or lia-

bility thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Steam Corporation will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Steam Corporation further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

10. The Steam Corporation has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Steam Corporation shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary

for the proper protection of employees in any department from injury shall be provided by the Steam Corporation in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Steam Corporation, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Steam Corporation and the Brotherhood or its members employed by the Steam Corporation, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Corporation or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Steam Corporation; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Steam Corporation and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Steam Corporation may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Steam Corporation, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Corporation or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to

and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Steam Corporation shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Steam Corporation and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Steam Corporation has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Steam Corporation is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service and, as such a public utility, is

unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, subparagraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same. In the event that, while this agreement is in force, the Steam Corporation shall be merged or consolidated into the Consolidated Edison Company of New York, Inc., this agreement shall nevertheless, until its expiration or termination, be continued in force and shall apply to the steam operations and employees of the merged corporation.

In witness whereof, the New York Steam Corporation and the Brotherhood and its Local Union have executed this agreement, the sixteenth day of June, 1937.

New York Steam Corporation, by David C. Johnson, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B826, William Wuest, President. Frank White, Vice President. Henry J. Parker, Rec. Secretary.

Attest: Wm. J. Baldwin, Jr., Secretary.

Memorandum of Agreement Between Westchester Lighting Company and The Yonkers Electric Light and Power Company and the International Brotherhood of Electrical Workers, Through Its Local Union No. B832

Effective May 28, 1937

Agreement between Westchester Lighting Company and The Yonkers Electric Light and Power Company, parties

of the first part (hereinafter referred to collectively as the "Westchester Companies"), and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Westchester Companies who are members of the Brotherhood and enable the Westchester Companies efficiently and economically to perform their obligations as public utilities and to furnish uninterrupted electric and gas service in their territories, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Westchester Companies who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric and gas service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Westchester Companies recognize the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Westchester Companies recognize, and will not interfere with, the right of their employees to become members of the Brotherhood, and agree that there shall be no discrimination, interference, restraint or coercion, by the Westchester Companies or any of their agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the

Brotherhood and also agrees not to solicit membership on the Westchester Companies' time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Westchester Companies to be essential to their performance of their obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Westchester Companies or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after Sep-

tember 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Westchester Companies, in order to insure orderly operation and adequate and continuous service to the public.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936, and prior to January 1, 1937.

Executed, June 14, 1937.

F. A. U. E. J. Q. E. F. H. D. W. T. E. P. P.
A. L. C.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of 5% in the wages to be made effective July 1, 1937, of all employees receiving less than $5,000 per annum with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than 5%, they will be increased to equal 5%.

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees

receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 14, 1937.

Westchester Lighting Company, by E. P. Prezzano, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B832, by Fred A. Ungerer, Edward F. Hayde, Edmund J. Quain.

Attest: By Alf L. Carroll.

The Yonkers Electric Light and Power Company, by E. P. Prezzano, President.

Attest: By Alf L. Carroll.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Westchester Companies will continue in force for the duration of this agreement but without commitment or liability thereafter, substantially their present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the Savings and Loan Association, the allowances for jury duty and military duty, group insurance, the present medical services, sick benefits and any Mutual Aid Benefits now in force. The Westchester Companies will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Westchester Companies further state (but without modifying the voluntary and non-obligatory character of their Provisional Retirement Plans for Employees) their present intention to continue for the term of this contract, their said Provisional Retirement Plans for Employees as now maintained.

Article VII

Lay-Offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

10. The Westchester Companies have the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Westchester Companies shall continue to make reasonable provisions for the safety and health of their employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Westchester Companies in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend, or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Westchester Companies, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Westchester Companies and the Brotherhood or its members employed by the Westchester Companies, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Westchester Companies; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Westchester Companies and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Westchester Companies may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the mem-

bers of the board shall be final and binding upon the Westchester Companies, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Westchester Companies shall rein-

state such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Westchester Companies and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Westchester Companies have been able (and hope in the future to continue to be able) to secure to their employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Westchester Companies are regulated public utilities under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such public utilities, are unable to increase their rates and charges for services rendered consumers unless and until they secure the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, subparagraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other

party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of their desire to terminate the same.

In witness whereof, Westchester Lighting Company and The Yonkers Electric Light and Power Company and the Brotherhood and its Local Union have executed this agreement, the 28th day of May, 1937.

Westchester Lighting Company, by E. P. Prezzano, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B832, by Fred A. Ungerer, Temporary President; by Edward F. Hayde, Temp. Vice President; by Edmund J. Quain, Temp. Financial Secretary.

Attest: By Alf L. Carroll.

The Yonkers Electric Light and Power Company, by E. P. Prezzano, President.

Attest: By Alf L. Carroll.

Memorandum of Agreement Between Consolidated Telegraph and Electrical Subway Company and the International Brotherhood of Electrical Workers, Through Its Local Union No. B828

Effective June 23, 1937

Agreement between Consolidated Telegraph and Electrical Subway Company (hereinafter referred to as the "Subway Company") and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Subway Company who are members of the Brotherhood and enable the Subway Company efficiently and economically to perform its obligations to the City of New York and to public utilities using its conduits, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Subway Company who are members of the Brotherhood and are engaged in operations essential to the performance of its contractual obligations, but not including general foremen or supervisors, watchmen, or temporary employees.

Article II

No Discrimination

2. The Subway Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Subway Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood and agrees that there shall be no discrimination, interference, restraint or coercion, by the Subway Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Subway Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours (except for chauffeurs) and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on thirty-five hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments. Chauffeurs will receive overtime for work in excess

of a nine-hour work day, or for work in excess of the scheduled hours per day (when less than nine hours) or of a forty-hour week.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Subway Company to be essential to its performance of its contractual and public obligations. Regular employees who work on a legal holiday according to their regular schedule will receive pay therefor on a straight-time basis and in addition will be given one day off, with pay on a straight-time basis, during an ensuing period of not more than one month. Where a regular employee is called to work on a legal holiday which is not on his regular schedule, he will receive regular pay plus overtime at the rate of time and a half for the work-time so required. The manner in which compensating time off is allowed for holiday work shall be continued in force as the same is now in effect in the Subway Company at the time of the signing of this agreement, in so far as such continuance is compatible with the efficient performance of the public obligations of the Subway Company.

Regular employees prevented by inclement weather from working during their standard working days will be paid for such time at their regular rates of pay, provided they report on the job at their usual starting time, for instructions.

Article IV

Vacations

5. Each employee who was in the employ of the Subway Company on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

6. The vacation of an employee will, so far as practicable be granted at the time requested by him; but the final right

to allot vacation periods is reserved exclusively to the Subway Company, in order to insure orderly operation and adequate and continuous performance of its contractual obligations.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 24, 1937.

S. D. W. C. J. D. D. W. T. E. S. C.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars ($5,000.00) per annum, with the exception of those who have received increases between January 1, 1937 and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an

increase of $1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 24, 1937.

Consolidated Telegraph and Electrical Subway Company, by E. S. Callahan, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B828, Stephen Donohue, President; William Carey, Vice-President; Joseph Daly, Recording Secretary.

Attest: F. D. Sheibley, Secretary. (Seal.)

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Subway Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Subway Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Subway Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following

factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

10. The Subway Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Subway Company shall continue to make reasonable provision for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Subway Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Subway Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Subway Company and the Brotherhood or its members employed by the Subway Company, as to the meaning, ap-

plication or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman or the immediate supervisor of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the supervisor of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the management of the Company;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the management of the Subway Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Subway Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members.

In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Subway Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Subway Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the management of the Company, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time

of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for the Subway Company shall consist of not less than three employees, and not more than five such employees, designated by the Brotherhood, who upon reasonable notice to his immediate supervisor will be afforded such time off, without pay, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, upon notice to and permission from his immediate supervisor and the supervisor of the department or departments he is to visit.

The actual number of members of the grievance committee shall be mutually agreed upon between the Brotherhood and the management of the Subway Company.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Subway Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Subway Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours and working conditions, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Subway Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular departments of the enterprise, save such types of work as are in their nature seasonal or sporadic, and to the fact that the Subway Company is under contractual obligation to operate efficiently and economically and to maintain adequate and continuous service at rates and charges limited pursuant to contract. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage or work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement, or of any extension thereof, of its desire to terminate the same.

In Witness Whereof, the Subway Company and the Brotherhood and its Local Union have executed this agreement, the 24th day of June, 1937.

Consolidated Telegraph and Electrical Subway Company, by E. S. Callahan, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B828, Stephen Donohue, President; William Carey, Vice-President; Joseph Daly, Recording Secretary.

Attest: F. D. Sheibley, Secretary. (Seal.)

June 24, 1937.

The execution and delivery of this agreement was duly approved by the Members of Local No. B828 at a meeting held June 23, 1937.

Joseph Daly, Recording Secretary.

Memorandum of Agreement Between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, Through Its Local Union No. B829

Effective June 15th, 1937

Agreement between Consolidated Edison Company of New York, Inc. (hereinafter referred to as the "Edison Company") and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Edison Company who are members of the Brotherhood and enable the Edison Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted electric service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Edison Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Edison Company recognizes the Brotherhood as the collective bargaining agency for those employees who

are members of the Brotherhood. The Edison Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Edison Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Edison Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Edison Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Edison Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 15th, 1937.

J. J. D. W. J. E. E. F. G. D. W. T. R. H. T. C. M. B. Jr.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Edison Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars ($5,000.00) per annum, with the ex-

ception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 15th, 1937.

Consolidated Edison Company of New York, Inc., by R. H. Tapscott, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B829, Joseph J. Delvac, Wm. J. Eitelbach, E. F. Galschjodt.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Edison Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Edison Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless

the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Edison Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

10. The Edison Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Edison Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Edison Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire,

suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Edison Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Edison Company and the Brotherhood or its members employed by the Edison Company, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Edison Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Edison Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the

other two members, either the Brotherhood or the Edison Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Edison Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Edison Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Edison Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Edison Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Edison Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, subparagraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year

to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In witness whereof, Consolidated Edison Company of New York, Inc., and the Brotherhood and its Local Union have executed this agreement the 15th day of June, 1937.

Consolidated Edison Company of New York, Inc., by R. H. Tapscott, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B829, Joseph J. Delvac, Wm. J. Eitelbach, E. F. Galschjodt.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

Memorandum of Agreement Between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, Through its Local Union No. B830

Effective June 15th, 1937

Agreement between Consolidated Edison Company of New York, Inc. (hereinafter referred to as the "Consolidated Company"), and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Consolidated Company who are members of the Brotherhood and enable the Consolidated Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Consolidated Company who are members of the Brotherhood

and are engaged in operations essential to the furnishing of gas service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Consolidated Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Consolidated Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Consolidated Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Consolidated Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day,

October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Consolidated Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Consolidated Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 15th, 1937.

D. W. T. G. T. P. J. A. F. F. G. B. R. H. T. C. M. B. Jr.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Consolidated Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars ($5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week, and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 15th, 1937.

Consolidated Edison Company of New York, Inc., by R. H. Tapscott, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B830, George T. Parker, Joseph A. Fisher, Frederick G. Buchner.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Consolidated Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and

provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Consolidated Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Consolidated Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

10. The Consolidated Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Consolidated Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department

from injury, shall be provided by the Consolidated Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Consolidated Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Consolidated Company and the Brotherhood or its members employed by the Consolidated Company, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Consolidated Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties,

through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Consolidated Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Consolidated Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Consolidated Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly schiduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Consolidated Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Consolidated Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Consolidated Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Consolidated Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected

as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In witness whereof, Consolidated Edison Company of New York, Inc., and the Brotherhood and its Local Union have executed this agreement the 15th day of June, 1937.

Consolidated Edison Company of New York, Inc., by R. H. Tapscott, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B830, George T. Parker, Joseph A. Fisher, Frederick G. Buchner.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

PETITIONERS' EXHIBIT No. 2

A. They did not.

Q. You stated that you signed some articles in a paper called the "Live Wire", in October or November issues, but you did not state the year, as I recall it. Can you state the year?

A. Yes.

Q. What is it?

A. 1935.

Q. I understood at the beginning of your testimony that you said that you were discharged on November 25.

A. November 29.

Q. The 29th?

A. Yes.

Q. That's all.

(Witness excused.)

Mr. Moscovitz: I will call Mr. Grulich.

Mr. Moscovitz: Mr. Examiner, Judge Ransom and myself are interested in finding out whether or not you would care for some further discussion regarding the amendment at this point before we proceed with this witness.

Trial Examiner Gates: I would like to have you state, Mr. Moscovitz, whether or not Board's exhibit #1 discloses that the I. B. E. W. was served with a copy of the complaint and the amended notice of hearing. My impression is that it does.

Mr. Moscovitz: Mr. Examiner, you will notice in Board Exhibit No. 1 a certification of Mrs. Herrick is that the complaint in this proceeding was served upon the Consolidated Edison Company as well as the other companies as the exhibit will show, the United Electrical & Radio Workers and the International Brotherhood of Electrical Workers. If you refer to the photostatic copy which you find in the exhibit you will see that the Consolidated Edison Company of New York acknowledge receipt of the complaint at 4 Irving Place, and you will also find that the United Electrical & Radio Workers of America acknowledged receipt on May 12, 1937, signed by G. Levine, and then you will find above that on the same date the acknowledgment of service by the I. B. E. W. signed by D. Kaplan.

Now, before the I. B. E. W., there is the figure "3", and before the figure 3 there is some lettering which I cannot figure out. It might be "local", it might be something else. I am not sure, but in any event there is an indication of acknowledgment by the I. B. E. W. signed by Mr. Kaplan, and then further on in the exhibit you will find that the amended notice of hearing which gave the adjourned date for the proceeding was served upon the International Brotherhood of Electrical Workers, as well as the other persons and parties in the complaint.

Judge Ransom: I don't know what the address is of the International Brotherhood of Electrical Workers or any of the authorized agents of that organization other than such addresses as have been given in this proceeding with respect to certain of the local unions which have been recognized by the respondent companies as collective bargaining agencies for such of their employees as belong to those unions.

I notice, however, that this purported service on the International Brotherhood of Electrical Workers is at 103 East 25th Street, which is not an address which I personally am

able to recognize as having any relationship to this organization.

So far as any of the local unions are involved in this proceeding are concerned. As far as I know, that may or may not be, that address of some local of the I. B. E. W., it may be, but not of any local which has been covered by testimony here. However, I do not personally regard the question of service of the notice of hearing as of any moment. My point is that you cannot maintain a valid proceeding against an employer and a collective bargaining agency in behalf of various of its employees under Section 8, subdivision 2 of the Act and hear and determine a section 8-2 charge and complaint without citing the labor organization complained of as a party to the proceeding.

I believe that the labor organization has been cited in here as a party to 9-2 proceedings in other cases, that is, I believe it has been cited in other cases and I think it is necessary hereto a valid proceeding. I do not think that this purported service on the I. B. E. W. at 130, or something, in the East 25th Street, even if it were a valid service, which I do not know, and therefore do not concede——

Trial Examiner Gates: Do you recall the names of any of these cases before the Board?

Judge Ransom: I do not at the moment, I probably could get them for you if necessary. Mr. Moscovitz probably knows them, but I do not think that this service, even if it were a good service of notice, would make this a valid proceeding on a Section 8 subdivision 2 charge and complaint, without the naming of the labor organization attacked and complained of as a party defendant.

Mr. Moscovitz: Well, all I say in this case is, so that there will be no confusion, first, that there has been, as evidently appears in the face of Board Exhibit No. 1, service. In the second place, there is no question here of placing the responsibility for the proceeding on the shoulders of the I. B. E. W. That should be made very clear, because the Board takes the position that the International Brotherhood of Electrical Workers is a bona fide labor organization within the meaning of our statute, and we are not here in this proceeding attacking the legality of the I. B. E. W. All we do here——

Trial Examiner Gates: Do you know of any cases, Mr. Moscovitz, in which the Board has held that? Under which

it may be decided under Section 8-2, that that is a necessary or a proper party?

Mr. Moscovitz: That a union is a necessary or proper party?

Trial Examiner Gates: Yes.

Mr. Moscovitz: I do not know of any such cases.

Trial Examiner Gates: Yes.

Mr. Moscovitz: I know of no such cases, all I want to point out in this proceeding, Mr. Examiner, is this, that we ask for no more than an order which directs the Consolidated Edison System to stop doing the things which the complaint alleges, that the Consolidated Edison System is doing in violation of 8-2, so that there should not be any question about the I. B. E. W., if we get an order directing the system to stop contributing to the I. B. E. W., or to stop controlling the I. B. E. W.

Trial Examiner Gates: I don't think it is necessary to go into it any further. The motion to amend the complaint, to amend paragraph 23 of the complaint by changing the figure 16 to 21, in the second line to 17 and 22, is granted; a similar motion as to paragraph 24, to change the figures 16 and 21 to 17 and 22, is granted.

Judge Ransom: I respectfully except, and in behalf of the respondents reserving our objections to jurisdiction, we ask that this proceeding be now terminated because of a fatal defect of the parties.

Trial Examiner Gates: The motion is denied.

Judge Ransom: Exception.

(Discussion off the record.)

Trial Examiner Gates: Proceed.

PETITIONERS' EXHIBIT No. 3

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case C-245

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and Its Affiliated Companies Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the Committee for Industrial Organization

Mr. David A. Moscovitz and Mr. Will Maslow, for the Board.

Whitman, Ransom, Coulson & Goetz, by Mr. William L. Ransom and Mr. Pincus M. Berkson, of New York City, for the Respondents.

Mr. Louis B. Boudin and Mr. Sidney Elliott Cohn, of New York City, for the United.

Mr. Joseph Friedman, of Counsel to the Board.

Decision and Order

Statement of the Case

Upon charges duly filed by United Electrical and Radio Workers of America, herein called the United, the National Labor Relations Board, herein called the Board, by Elinore Morehouse Herrick, Regional Director for the Second Region (New York City), issued its complaint dated May 12, 1937, against Consolidated Edison Company of New York, Inc., and its affiliated Companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company, herein called the respondents, alleging that the respondents had engaged in and were

engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect of the unfair labor practices, the complaint in substance alleged (1) that the respondents had employed and were employing industrial spies for the purpose of disclosing to the respondents the activities of their employees in and on behalf of labor organizations; (2) that on or about November 29, 1935, the respondents discharged, and thereafter refused to reinstate, Martin A. Wersing, Julius A. Grenlich, and Michael Wagner, employees of the respondents, and on or about June 19, 1936, discharged, and thereafter refused to reinstate, William J. Kennedy and John Emler, employees of the respondents, for the reason that they had engaged in concerted activities with other employees of the respondents for their mutual aid and protection; and (3) that the respondents had interfered with, restrained, and coerced their employees in the exercise of their right to form, join, and assist labor organizations of their own choosing and were continuing to do so, had contributed and were contributing financial and other support to the International Brotherhood of Electrical Workers, herein called the I. B. E. W., and had coerced and were coercing their employees to join or assist the I. B. E. W.

Copies of the complaint and of notice of a hearing to be held on June 1, 1937, at New York City, both dated May 12, 1937, were duly served upon the respondents, upon the United, and upon the I. B. E. W. On May 25, 1937, the Regional Director issued and duly served upon the parties and the I. B. E. W. an amended notice of hearing, specifying that the hearing would be held on June 3, 1937, instead of on June 1, 1937.

On May 17, 1937, the respondents, appearing specially, filed a motion to dismiss the complaint for lack of jurisdiction, on the ground that the Act was inapplicable to the respondents and their labor relations with their employees, for the reason, it was asserted, that the respondents conduct a local, intrastate business and are, therefore, subject exclusively to the New York State Labor Relations Act,[1]

[1] Chapter 443 of the Laws of 1937. The State Act is also designated as Article 20 of the Labor Law.

which was to become effective on July 1, 1937. The motion included a request that the motion be heard and determined by the Board prior to the hearing on the complaint, and was accompanied by an affidavit of Oscar H. Fogg, vice-chairman of the board of trustees of the respondent Consolidated Edison Company of New York, Inc., and vice-chairman or member of the board of directors of each of the affiliated companies named as respondents, containing a statement of facts tending to show that the respondents' business was of an intrastate character. On June 2, 1937, the Board denied the respondents' request for a prior and separate hearing by the Board on the motion to dismiss the complaint.

Pursuant to the amended notice, a hearing was held at New York City on June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, before Robert M. Gates, duly designated as Trial Examiner by the Board. The Board, the respondents, and the United were represented by counsel and participated in the hearing. The I. B. E. W. did not appear at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all the parties.

At the commencement of the hearing, argument was heard on two separate petitions to intervene filed with the Regional Director prior to the hearing by The Independent Gas and Electric Workers Union of Westchester County and by Independent Gas and Electric Union, both labor organizations claiming to have filed with the Regional Director informal charges against the respondents. The complaint herein was not based on these informal charges, but only on the formal charge filed by the United. Upon separate objections by counsel for the Board, the respondents and the United, the Trial Examiner reserved decision thereon, but on June 10, 1937, the second day of the hearing, he denied both petitions to intervene. The ruling is hereby affirmed.

At the commencement of the hearing, the respondents reserved their objections to the jurisdiction of the Board and noted an exception to the order of the Board denying a prior and separate hearing on the respondents' motion to dismiss the complaint. At the close of the presentation of the Board's case, the motion to dismiss the complaint for lack of jurisdiction was renewed by the respondents

and was denied by the Trial Examiner. The ruling is hereby affirmed.

On June 10, 1937, the second day of the hearing, the Trial Examiner allowed the complaint to be amended to include allegations of the discriminatory discharge of Stephen L. Solosy, without objection by the respondents other than their general reservation of objections to the jurisdiction of the Board. On June 14, 1937, the respondents filed a verified answer, in which they reserved their objections to the jurisdiction of the Board and in substance denied engaging in the unfair labor practices alleged in the complaint, setting forth in addition affirmative allegations in defense thereof.

Upon the completion of the presentation of the Board's case on June 24, 1937, counsel for the respondents requested an adjournment until July 6, 1937, to enable him adequately to prepare and present the respondents' case, and in particular to secure the testimony of Floyd L. Carlisle and Harold Dean, the testimony of both of whom was asserted to be indispensable. It was shown that Carlisle, who was chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and had been in charge of the respondents' labor policies and negotiations, was in France attending a meeting of the World Power Conference and would return to New York City on July 5, 1937; and that Dean, who was vice-president of New York and Queens Electric Light and Power Company and in charge of the execution of the policies of that company which resulted in the alleged discriminatory discharges of five of the persons named in the complaint, was in Milwaukee attending the annual conference of the American Institute of Electrical Engineers and was thus unavailable as a witness at that time. The only reason offered for not calling other witnesses at the close of the Board's case was that the Board had completed the presentation of its case sooner than was anticipated by the respondents. The Trial Examiner granted an adjournment until July 6, 1937, for the purpose of receiving the testimony of Carlisle only, and reserved until that time decision on the question whether the testimony of Dean and other witnesses would be taken when the hearing was resumed on July 6, 1937. The Trial Examiner granted permission to the respondents to present the matter of taking the testimony of witnesses other than

Carlisle on July 6, 1937, directly to the Board in the meantime. This was done by the respondents in a letter to the Board, dated June 28, 1937. The Board replied in a letter, dated July 2, 1937, stating that it would permit both Carlisle and Dean to testify on July 6, 1937, but would not permit any other witnesses to testify, on the ground that such other witnesses should have been produced on the completion of the presentation of the Board's case on June 24, 1937. After the testimony of Carlisle and Dean had been received on July 6, 1937, counsel for the respondents called a witness to testify concerning the alleged discriminatory discharge of Stephen L. Solosy. The Trial Examiner refused to allow the witness to testify. The respondents duly excepted to the ruling of the Trial Examiner. The Trial Examiner, however, allowed the respondents to introduce into the record an offer of proof concerning the alleged discriminatory discharge of Stephen L. Solosy.

After the close of the Board's case, counsel for the Board moved to conform the complaint to the evidence. The Trial Examiner denied the motion in so far as it was directed to bringing within the allegations of the complaint the discriminatory discharge of Philemon Ewing, who was not named in the complaint, but concerning whose discharge testimony had been received; but in other respects the motion was granted. The ruling is hereby affirmed. At the same time the Trial Examiner granted the respondent's motion to amend its answer to include as a separate defense allegations that certain contracts executed by the respondents and certain locals of the I. B. E. W. as of June 15, 1937, after the commencement of the hearing, had rendered moot any controversy raised by the complaint.

The parties did not avail themselves of the opportunity afforded for argument at the close of the hearing, but thereafter the respondents filed a brief.

By order of the Board, dated September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 27, of National Labor Relations Board Rules and Regulations—Series 1, as amended.

During the course of the hearing the Trial Examiner made a number of rulings on motions and on objections to the admission of evidence. The Board has reviewed the

rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

1. The Respondents and their Businesses

A. Incorporation and nature of business

Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company are New York public utility corporations, having their principal offices and places of business in New York City. They are engaged in the business of supplying electric energy to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and a part of the Borough of Queens, within the City of New York. Consolidated Edison Company of New York, Inc. is engaged also in the business (a) of supplying gas to consumers situated in the Boroughs of Manhattan and The Bronx, and a part of the Borough of Queens, and (b) in selling to manufacturers and jobbers in New York City for commercial purposes certain by-products incidental to its manufacture of gas, namely, coke, coke breeze, tar, light oils, and sulphate ammonia. Consolidated Edison Company of New York, Inc., besides being an operating utility company is also a holding company, owning controlling stock interests, as described below, in the other respondents herein. Westchester Lighting Company and The Yonkers Electric Light and Power Company are New York public utility corporations, having their principal office and place of business in Mount Vernon, New York. The former company is engaged in the business of supplying electricity and gas to consumers situated in Westchester County, New York, except the city of Yonkers; and the latter company is engaged in the business of supplying electricity to consumers situated in the City of Yonkers, Westchester County, New York. New York Steam Corporation, a New York public utility corporation having its principal office and place of business in New York City, is engaged in the business of supplying steam to consumers situated within a part of the Borough of Manhattan. Consolidated Telegraph and

Electrical Subway Company, a New York corporation having its principal office and place of business in New York City, is engaged in the business of constructing, equipping, maintaining, and operating, under contracts with the City of New York, underground ducts or conduits for the reception of electrical conductors (other than telegraphic and telephone conductors) in the Boroughs of Manhattan and The Bronx. Consolidated Edison Company of New York, Inc., and Westchester Lighting Company occupy space in such ducts and pay rent for the space so occupied.

B. Stock Ownership

Consolidated Edison Company of New York, Inc., conducts the electric business formerly conducted by The New York Edison Company, Inc. (including that of the latter's predecessors, The New York Edison Company and The United Electric Light and Power Company) and by Bronx Gas and Electric Company, merged into Consolidated Edison Company of New York, Inc., in 1936; also the gas business formerly conducted by it under the name of Consolidated Gas Company of New York and that conducted by various gas companies in the Boroughs of Manhattan and The Bronx and part of the Borough of Queens, merged in 1936 into Consolidated Edison Company of New York, Inc. The latter company owns more than 90 per cent of all the outstanding voting stock of each of its affiliated companies named as respondents herein.

C. Unitary and Integrated System

The respondents are commonly referred to as the Consolidated Edison Company group of companies or the Consolidated Edison Company System. They constitute and are operated as a unitary and integrated system.

System management.—A majority of the board of directors of each of the respondents, other than Consolidated Edison Company of New York, Inc., is made up of trustees or officers of the latter company. Each of the respondents has executive and operating officers and employees who are not officers of Consolidated Edison Company of New York, Inc., but who take part, with the trustees and officers of the latter company, in the discussion and determination of the major and general policies of the respondents. The

major labor policies, among others, of the respondents are thus discussed and determined, but are locally administered and applied by the board of directors and executive officers of each respondent, in a manner not inconsistent with the general policies as determined by and for the respondents as a whole.

Unified operations of System.—The companies of the Consolidated Edison Company System have for many years been under a unified ownership, management, and operation. Thus, the gas operations of the System have for many years been carried on in accordance with the terms of joint facility arrangements; and the manufacturing plants, holder-stations, pumping stations, transfer and distribution lines, and other properties of the various companies have been and are operated as an interconnected system. Similarly, the generating facilities of the electric companies in the System have been and are operated as a unit for the System electric load, through the medium of a System operator or load dispatcher, to secure the greatest over-all economy of production consistent with the highest degree of continuity. Additional electric energy is purchased from New York Light and Power Company, which is not affiliated with the respondents, under interchange of power arrangements established with that company, in the interests of assuring continuity of service to the public and as a means of providing for the electric requirements of the System. New York Steam Corporation has a connection with one of the electric generating stations of Consolidated Edison Company of New York, Inc., from which is made available an additional supply of steam for resale to its customers.

Location of respondents' properties.—The respondents' electric generating stations, sub-stations, gas manufacturing plants, gas holder-stations, steam generating plants, service buildings, shops, store-rooms, garages, and similar structures are all maintained and operated within the State of New York, and principally in New York City and Westchester County. All transmission and distribution facilities and equipment owned by the respondents and all other property owned by the respondents and used in their business are located in New York City or Westchester County. All meters in use by any of the respondents are located and are read on the premises of consumers situated in New York

City and Westchester County; and all metering apparatus and equipment furnished by the respondents are similarly located.

Exclusiveness of respondents' service.—In 1936 the System supplied 97.5 per cent of the total electric energy sold by central station companies in New York City, and practically all of the electric energy sold by central station companies in Westchester County. It supplied 55.3 per cent of the total gas supplied to consumers in New York City. It did not supply any gas to consumers in the Boroughs of Brooklyn and Richmond, and the larger part of the Borough of Queens. On the other hand, its percentage of the total gas supplied to consumers in Manhattan and The Bronx is very much greater than 55.3 per cent. Westchester Lighting Company is the only public utility supplying gas in Westchester County; and New York Steam Corporation is the only central-station steam utility in New York City.

Annual production, sales, and employment totals.—In 1936, the System generated and purchased 6,038,989,792 kilowatt hours of electric energy and sold 5,130,976,460 kilowatt hours. The total revenue from the sale of electric energy amounted to $180,448,596.19. During the same period the System produced 39,286,022,000 cubic feet of gas, and sold 38,016,134,000 cubic feet. The total revenue from the sale of gas amounted to $41,163,261.69. The total revenue from the sale of steam during 1936 was $10,761,341.04. During the same period the revenue from the sale of coal and oil by-products amounted to $3,485,338.01, but such revenue is treated by the respondents as an abatement of production expenses.

As of April 17, 1937, the respondents employed 42,101 employees. The total annual payroll for 1936, including annuities and separation allowances paid, amounted to $81,891,990.40.

D. Purchase of Materials in Interstate Commerce

Coal and oil.—The raw materials used by the respondents in the production of all their electric energy, gas, and steam are coal and gas-oil. In 1936 the respondents purchased 4,975,452 tons of coal at a cost of $23,224,761, and purchased 114,370,343 gallons of oil. All the coal was mined outside

the State of New York and transported from points outside the State of New York to the plants of the respondents by rail and barge or by rail and steamship. All the oil is produced at wells and refineries outside the State of New York and transported in barges from points outside the State of New York to the respondents' gas plants in New York City. The respondents do not own or operate any ships, barges, tugs, or freight-cars for the transportation of gas and oil from their points of origin outside the State of New York to the respondents' stations or storage yards. The respondents maintain unloading and coal conveying equipment at their stations or storage-yards and the respondents' employees unload the coal from the boats. The shipment of coal and oil to the respondents is practically continuous throughout the year.

Copper.—In 1936 the respondents purchased $53,160 worth of copper for electrical construction and operation. The copper is mined outside the State of New York and a substantial portion thereof is purchased from concerns situated outside the State of New York.

Cable.—In 1936 the respondents purchased $4,659,840 worth of cable, of which approximately 30 per cent came from factories situated outside the State of New York.

Other materials and equipment.—In 1936 the respondents purchased substantial quantities of other materials, equipment, and supplies, including distribution and power transformers, switches, steel pipe, concrete, cement, electric meters, gas meters, poles, incandescent lamps, and similar items. Part of these items were purchased from concerns situated outside the State of New York, and part from dealers within the State of New York.

E. Dependence of Particular Consumers on Electric Energy and Gas Supplied by the Respondents

The written stipulation for the determination of the question of jurisdiction entered into by counsel for the Board and counsel for the respondents sets forth data concerning a number of particular consumers which show the dependence on the electric energy and gas supplied by the respondents of various types of important businesses engaged in interstate and foreign commerce and communication and the disastrous effect on such commerce and com-

munication that would result from a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employees.

Railroads.—The respondents supply electric energy to the New York Central Railroad, an interstate railroad. The electricity is used by the Railroad Company in part for the lighting and operation of the Grand Central Terminal, a terminal for interstate and intrastate trains operated by the Railroad Company, in part for the lighting and operation of various structures on terminal lands, and in part for the electric operation of both intrastate and interstate passenger trains from Harmon, New York, to the Grand Central Terminal and from the Grand Central Terminal to Harmon, New York. No steam-propelled passenger trains ordinarily operate between the Grand Central Terminal and Harmon, New York. Electricity supplied by the respondents is also used for the air-conditioning of Pullman cars attached to interstate trains in the yards of the Railroad Company in New York City. In 1936 the Railroad Company purchased from the respondents 145,593,421 kilowatt hours for all purposes. The respondents deliver all of the electric energy to the Railroad Company at designated locations in the State of New York.

The respondents also supply electric energy to the New York, New Haven, and Hartford Railroad Company, an interstate railroad, which utilizes it for the operations of its freight terminals, for both interstate and intrastate trains, and for the operation of passenger trains in and out of Grand Central Terminal, many of which trains operate on interstate runs. The total electric energy supplied to the New Haven Railroad in 1936 was 58,793,983 kilowatt hours and was delivered at designated locations in the State of New York.

The respondents also supply electric energy to the Hudson and Manhattan Railroad Company, which utilizes it for the lighting and operation of its terminal buildings, for the operation of a rapid transit railroad which runs for a distance in New York City and thence by tunnel to Jersey City and Hoboken, New Jersey, and for the operation of an interurban railroad from its terminal in New York City through the tunnel under the North River to Jersey City and Newark, New Jersey. The total electrical energy supplied

to this Railroad Company in 1936 was 57,221,097 kilowatt hours and was delivered at designated locations in the State of New York.

The respondents also supply electric energy to the Lehigh Valley Railroad Terminal in New York City for the operation of its interstate railroad terminal.

Steam service supplied by New York Steam Corporation, a respondent herein, is used to operate compressors, for the operation of switches in the interstate railroad tunnel of the Pennsylvania Railroad Company under the North River.

Navigation in New York harbor.—The respondents supply electric energy to the Federal Government for the operation in New York harbor of six lighthouses, 8 beacon or harbor lights, the United States Barge office, the United States Customs Houses, various warehouses, and Governor's Island. They also supply electricity to the City of New York for the operation of devices used as aids to navigation, namely, lights on various bridges and on the ends of various piers and docks. The respondents also supply electric energy to a majority of the piers of trans-Atlantic and coastal steamship companies, along the East River and the North River, for lighting, freight-handling, and related uses. They also supply electricity to the Port of New York Authority for the operation of its terminal; the Holland Tunnel, an interstate vehicular tunnel under the Hudson River; and the other projects under its supervision.

Ferries.—The respondents supply electricity to various ferry slips from which steam-propelled ferries operate on the Hudson River between New York and New Jersey. The electricity is used in the operation of waiting rooms, ticket offices, signs, and approaches. They also supply electricity, under contract with the Federal Government, to ferry slips from which ferries operate in waters other than the Hudson River.

United States post-offices.—The respondents supply electric energy to the Federal Government for the operation of its General Post Office in New York City and some 132 branch post-offices in New York City and Westchester County. The electricity is used for operating pneumatic tubes between postal stations, equipment in stations, including conveyor belts, elevators, ventilators, and similar equipment. Postal operations are conducted on a 24-hour basis.

Telegraph.—The respondents supply electric energy to the Western Union Telegraph Company and its some 210 branch offices in New York City and Westchester County, and to the Postal Telegraph Company and its some 140 branch offices in New York City and Westchester County. The electricity is used for general lighting and power purposes and for the operation of apparatus used in the transmitting and receiving of telegraphic messages, both local and interstate.

Telephone.—The respondents supply electric energy to the New York Telephone Company for the operation of its various buildings, offices, and exchanges in New York City and Westchester County. The electricity is used to operate the equipment utilized in the transmitting and receiving of interstate and local communications.

Radio.—The respondents supply electric energy to RCA Communications, Inc., a subsidiary of Radio Corporation of America, which, among other uses, is used to operate the switchboards for its trans-Atlantic radio service. Similarly, the respondents supply electric energy to Columbia Broadcasting System, Inc., and to its subsidiary, Atlantic Broadcasting Company, for the purpose, among others, of operating equipment which broadcasts to other states as well as the State of New York.

Airports.—The respondents supply electric energy to the Floyd Bennett Air Field, for such purposes as building lighting, field illumination, the operation of a radio beam, obstruction lighting, and the operation of hangar machine shops.

Newspapers.—The respondents supply electric energy to the New York Times Company for the operation of all the power equipment in the printing plant and for general lighting purposes. The newspapers printed and published by this company are circulated throughout the world.

Dow-Jones Tickers.—The respondents supply electric energy to Dow-Jones and Company, Inc., for the operation of its financial news ticker service.

New York Stock Exchange.—The respondents supply electric energy to the New York Stock Exchange Building Company, and a related concern, Stock Exchange Building Company, located in the same premises, for light and power

in the operation of the Stock Exchange and of the Stock Exchange ticker system for the sending out of stock quotations and transactions. Through this system stock exchange quotations are made instantly available throughout the country by telegraph.

F. Relation to Commerce

On January 15, 1936, an interruption of the alternating current service in parts of the Boroughs of Manhattan and The Bronx was produced by a short circuit in the respondents' Hell Gate generating station. Service to some 40,000 customers, out of about 2,000,000 electric customers of the respondents, involving about ten per cent of the load, was affected. Although other generating plants of the System took over the load from such units at the Hell Gate station as were affected by the short-circuit, several telephone exchanges and branch post-offices, and various industrial and commercial concerns in the area affected, experienced a partial or total interruption of electric service, as the restoration of service required considerable work in the streets, on transformers, and on consumers' premises (fuses, motors, etc.) to repair the effects of the impact of the short circuit on the distribution lines in the area affected, as well as work in the electrical galleries at Hell Gate.

This incident coupled with the fact that the respondents supply 97.5 per cent of the total electric energy sold in New York City by central station companies and the respondents' contention at the hearing and in their brief that the operations of the System could easily be endangered and seriously dislocated by a single one of certain of its employees, is indicative of the effect which a labor dispute between the respondents and their employees might have upon the operations of the respondents and in the multitude of businesses whose operations are dependent on them for electric energy.

It thus becomes evident from all the above findings (1) that the respondents receive vast quantities of coal and oil and quantities of copper, cable, and other commodities in interstate commerce; (2) that the highly industrial and commercial area of New York City and Westchester county, the former the largest shipping, transportation, and commercial center in the United States, is almost entirely dependent on the Company as a commercial source of electric energy and steam, while the Boroughs of Manhattan and The Bronx,

a part of the Borough of Queens, and Westchester County are almost entirely dependent on the respondents for gas; (3) that a labor dispute between the respondents and their employees interrupting the respondents' operations would seriously affect the flow of vast quantities of coal and gas-oil, and quantities of copper, cable and other commodities, in interstate commerce; (4) that a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employees, (a) would in a short time paralyze the operations of many of the instrumentalities of interstate and foreign commerce and communication in and around New York City, and thereby also paralyze the operations of most of the businesses situated in the area served by the respondents and engaged in shipping and receiving commodities in interstate and foreign commerce, and would curtail the United States mail service, including mail carried in interstate and foreign commerce, and (b) would directly cause the cessation or curtailment of the operations of the businesses served with power by the respondents and engaged in shipping and receiving commodities in interstate or foreign commerce.

Expressed concisely, a labor dispute between the respondents and their employees interrupting the respondents' operations would not only affect the flow of the large quantities of coal and oil which they receive in interstate commerce, but might be substantially equivalent to the effect on interstate and foreign commerce and communication which would be caused by simultaneous labor disputes in the respondents' business and in all the businesses served by the respondents that are engaged in operating the instrumentalities of interstate and foreign commerce and communication and all the businesses engaged in shipping and receiving commodities in interstate or foreign commerce.

II. The United Electrical and Radio Workers of America

The United Electrical and Radio Workers of America, which has filed the charge upon which the complaint herein is founded, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership the employees of the whole electrical and radio industry in the United States. Local No. 1212 of the United admits to membership only employees of the respondents.

III. The Unfair Labor Practices

A. Background of Labor Organization Among the Respondents' Employees

In the latter part of 1933 and the early part of 1934 organizations known as Employees' Representation plans, herein called the Plans, were established with the assistance of the respondents among the employees of each of the respondents and of each of the companies which were merged in 1936 into Consolidated Edison Company of New York, Inc. The Plans appear to have been formed as a means of purported compliance with the National Industrial Recovery Act and the codes adopted thereunder for the power industry.

There is specific oral and documentary evidence concerning the formation and operation of the Plan among the employees of Bronx Gas and Electric Company, which was merged in 1936 into Consolidated Edison Company of New York, Inc., and also ample evidence that the formation and operation of the Plans among the employees of the various other companies in the respondents' system conformed to a similar pattern. The following narrative of the establishment of the Plan among the employees of Bronx Gas and Electric Company is thus typical of the Plans established at approximately the same time throughout the companies of the respondents' system, including Consolidated Telegraph and Electrical Subway Company.

One day in the latter part of 1933, during working hours, several employees of Bronx Gas and Electric Company were notified by their supervisors to report to the president and the vice-president of the Company. On their arrival they were informed by the president and the vice-president that they, the employees, had been sent on this mission by their fellow employees for the purpose of instituting a procedure for collective bargaining. They were given petitions to circulate among the employees for signatures. The petitions bore captions stating in substance that the subscribers desired to have a poll among the employees to determine upon the establishment of a means of collective bargaining. Harold Straub, one of the employees engaged in procuring signatures, testified that his foreman placed a company car at his disposal for contacting employees and that he devoted

two full days to the task, for which he was paid his regular salary as a lineman. After sufficient signatures to the petitions had been obtained, a poll was conducted among the employees on the question whether they desired the establishment of the Plan, which had been drafted and distributed by the Company, as a means of collective bargaining. The question having been decided affirmatively, the election of officers was held shortly thereafter. Practically all the employees became members of the Plan, as it was the current sentiment that such action accorded with the desire of the Company. The Company bore the expense of conducting the poll and the election and paid for the printing of the petitions, circulars, and copies of the constitution and by-laws of the Plan and for the time devoted to the Plan by sundry employees.

The constitution and by-laws of the Plan stated that its purpose was "to provide means by which employees of the Company, through representatives of their own choosing, may deal collectively with the management of the Company" and that "collective bargaining under this Plan may relate to wages, hours of labor, working conditions, health, safety, education, recreation, and like matters affecting employment, together with the adjustment of grievances arising out of the relations of Employees with the Management." Membership was restricted to employees, and was to cease with termination of employment. There were no dues. The Plan divided the Company into a number of departments and provided for a department council and a general council. The former consisted of representatives elected by the employees in each department, in the proportion of one representative for every 50 members of the Plan in the department. The general council consisted of the chairmen of the department councils. In the larger companies of the respondents' system, there were also bureau councils, bureaus being subdivisions of departments. In voting each member of the general council was entitled to cast one vote for each member of the Plan represented by him.

Similar Plans were established in all the Companies of the respondents' system and in a substantially similar fashion. The respondents bore the expenses of all the meetings and elections, both of which took place on Company time and property, of clerical and stenographic services,

printing, and of the entire functioning of the Plans. The members of the general and department councils were paid their regular salaries by the respondents for all time devoted to Plan affairs. The chairmen of the general councils devoted most of their time to Plan work, and in the larger companies both the chairman and the secretary devoted their full time to such work, occupying offices in the respondents' premises, equipped with desks and provided with stenographic service. The chairmen of the general councils and, in the larger companies, the secretary also, were allowed expense accounts which were paid by the respondents as routine matters upon vouchers signed by department heads.

On several occasions meetings of the chairmen of all the general councils were called by the respondents for the purpose of imparting information to be reported to their constituents, but never for the purpose of bargaining collectively as a unit. Thus in July 1936, Carlisle, chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and member of the board of directors of each of the respondents herein, called such a meeting to inform it of the restoration of a former pay reduction and, in December 1936, to inform it that there would be no Christmas bonus as had been rumored.

In the early part of 1934, approximately coincidental with the establishment of the Plans, there was formed a labor organization among the employees of the respondents, known as the Brotherhood of Utility Employees, herein called the Independent Brotherhood. It was a national organization, but certain of its locals limited their membership exclusively to the respondents' employees. All six employees named in the amended complaint as having been discriminatorily discharged were members of the Independent Brotherhood, while several of them were organizers of Local No. 103, which had jurisdiction of the employees of New York and Queens Light and Power Company. All six were also members of the Plans and at least one was for a time an officer of the Plan at New York and Queens Light and Power Company. In 1935 certain of these six employees, as stated hereinafter, formulated a petition of grievances, dealing principally with wage increases, for presentation to the management of New York and Queens Electric Light and Power Company. After overcoming

the reluctance of the general council, it was finally presented to the management, but nothing was done concerning it. During the same period the Plan members of one of the departments of Consolidated Gas Company, Inc., set up a committee, headed by two members of the Independent Brotherhood, to investigate the Plan with respect to company domination and pursuant to its mandate the committee filed monthly reports of company domination. Convinced that the Plans were dominated by the respondents, the Independent Brotherhood issued and distributed magazines, pamphlets, circulars, and leaflets attacking the Plans as company-dominated unions. Representatives of the Independent Brotherhood also attended all the hearings before the New York Public Service Commission, involving such matters as rates, and claimed an interest therein by reason of their representation of respondents' employees.

Failure to achieve any success as an independent organization induced the several locals of the Independent Brotherhood in March 1936 to consolidate and affiliate with the I. B. E. W. as one local, Local No. B-752. In March 1937 the members of Local No. B-752 voted to affiliate with the United and thereupon one local, Local No. 1212, was chartered with jurisdiction over only employees of the respondents. All the members of Local B-752 became members of the United Local No. 1212. Local No. B-752 was thereupon suspended by the I. B. E. W. In April 1937 the United announced the formation of a utility division and commenced a vigorous campaign to organize the respondents' employees.

At this junction the respondents instituted a campaign to procure signatures of employees to cards designating their desire for the continuance of the Plans. This campaign was interrupted by the decisions of the United States Supreme Court sustaining the validity of the National Labor Relations Act, for thereupon the respondents discontinued their campaign and abruptly altered their labor policy, as described below.

B. Events Between April 12, 1937, and the Date of Execution of Contracts With the I. B. E. W.

After the United States Supreme Court on April 12, 1937, rendered the decisions sustaining the Validity of the National Labor Relations Act, Carlisle, who was in charge of

the respondents' labor policy, had two conferences concerning the recognition of the I. B. E. W. with D. W. Tracy, the International president of the I. B. E. W. On April 16, 1937, Tracy dispatched a letter to Carlisle demanding recognition of the I. B. E. W., accompanied by a proposed contract providing for recognition of the I. B. E. W. as the representative of its members, a five per cent increase in wages, and a procedure for settling grievances which outlawed strikes and lockouts. On the morning of April 20, 1937, Carlisle called a convention in the board room of Consolidated Edison Company of New York, Inc., of the members of all the general councils of all the Plans, at which he announced that in view of the decisions of the United States Supreme Court a continuance of the Plans with the financial support of the respondents would constitute a violation of the spirit of the National Labor Relations Act, and more particularly, of the provisions of the Doyle-Neustein Bill, which he termed a little Wagner Act, which was then pending in the Legislature of the State of New York, and appeared almost certain of enactment. He informed them that therefore he intended to recognize the I. B. E. W. In response to questions from the floor, Carlisle declared that employees were free to join any labor organization, but that the respondents intended to recognize the I. B. E. W. Various comments from the floor indicated that the Plan representatives considered the sudden recognition of the I. B. E. W. as a means of coercing them into transferring their allegiance to the I. B. E. W. Carlisle refused the request of several Plan representatives for a delay of the recognition of the I. B. E. W. until the employees had had an opportunity to discuss the matter.

Harold Straub, chairman of the general council of the Plan at Bronx Gas and Electric Company asked Carlisle whether it was not true that he had hitherto considered unions as unnecessary evils, but now, in view of the United States Supreme Court decisions and the pending Doyle-Neustein Bill, as necessary evils, and as between the I. B. E. W. and the United he preferred that the employees join the I. B. E. W. Carlisle said that this was a very apt statement of his position. Straub testified that Carlisle stated to him also that he thought that the Labor Relations Board of the State of New York would be composed preponderantly of men in sympathy with the American Federa-

tion of Labor and hence that it was the part of wisdom to recognize the I. B. E. W. When Carlisle, himself, testified, he was not specifically questioned on direct examination concerning Straub's testimony on these particular points. Straub also asked Carlisle why recognition was being accorded the I. B. E. W. when its membership among the respondents' employees was negligible. Carlisle replied that the I. B. E. W. had some members and would soon have a great many more. Carlisle, himself, testified that at the time he recognized the I. B. E. W. he knew that its organization among the respondents' employees was incomplete and that the formation of locals and the procurement of membership was to follow recognition and that when that was accomplished contracts with the various locals would be executed. He also testified that at this time he knew that the members of Local B-752 had transferred their allegiance to the United which had commenced a vigorous campaign for membership. It is quite clear that recognition of the I. B. E. W. under these circumstances was intended as a blow to the United, as an aid to the I. B. E. W., and as a strong indication to the employees of the union favored by the respondents.

After Carlisle left the conference he dispatched a letter to Tracy recognizing the I. B. E. W. along the lines of the proposed contract. News of this letter appeared in the early afternoon papers, which led many of the Plan representatives to believe that he had formally recognized the I. B. E. W. even before he had called the conference of general councilmen. The conference continued for a time after Carlisle's departure, and speeches were made characterizing recognition of the I. B. E. W. as a design to force the employees into the I. B. E. W. Upon the adjournment of the conference, the general councilmen proceeded to a meeting of the general council of Consolidated Edison Company of New York, Inc., where the chairman narrated the above events. The general opinion of this meeting also was that recognition of the I. B. E. W. was intended to force membership in the I. B. E. W.

On the afternoon of the same day, Straub called on Colonel Stilwell, vice-president of Consolidated Edison of New York, Inc., with whom Straub, as chairman of the general council of the Plan at Bronx Gas and Electric Company, had discussed Plan matters since the merger of the latter company

in 1936 into Consolidated Edison Company of New York, Inc. Stilwell said that recognition of the I. B. E. W. would be a blow to the Committee for Industrial Organization, of which the United was an affiliate, and was so intended, and that it would be a wise move for the Plans and the employees to go over to the I. B. E. W. and obtain control of it. Upon Straub's request he gave him the name and address of G. M. Bugniazet, International secretary of the I. B. E. W., with whom he could confer concerning ways and means of switching the Plan at Bronx Gas and Electric Company over to the I. B. E. W. The following day Straub called at the address, but merely discussed the aims and policies of the I. B. E. W. with a representative of the I. B. E. W. Later that same day Straub called a meeting of a number of members of the Plan at the Bronx Gas and Electric Company and informed them of his actions. He found among them a strong sentiment for the United and for an independent union with no outside affiliation, while several of them complained that their foremen were applying pressure in behalf of the I. B. E. W.

On the following day, April 22, a conference of 400 employees, mostly members of the various general councils, who, as we have already indicated, were always free to leave their work for Plan affairs, was held in the auditorium of Consolidated Edison Company of New York, Inc., building on Irving Street. Carlisle had been invited to attend, and while awaiting his arrival the men discussed the matter. Three views were presented. Some favored the I. B. E. W., others the United, and others an independent union with no outside affiliation. A motion for a secret ballot on the question among those present at the conference was carried. William P. Ganley, co-chairman of the general council of the Plan at Consolidated Edison Company of New York, Inc., and presiding officer of this meeting, took no action, however. The meeting was adjourned to the company's cafeteria where Ganley read a telegram from Tracy indicating the manner in which the various Plans could come into the I. B. E. W. as locals with the Plan officers as officers of the locals. The meeting growing somewhat restive, a messenger was sent to summon Carlisle. Upon his arrival Carlisle was subjected to such a barrage of questions that the procedure was adopted of formulating three questions which were ad-

dressed to Carlisle by Ganley. The questions and answers were substantially as follows:

Question. Could a vote be taken among the respondents' employees on the matter.

Answer. If such a vote implied that the respondents would bear the expenses of the election, it could not.

Question. Would he stop department heads and foremen from coercing employees into joining the I. B. E. W.?

Answer. Since he had not issued any order to do so, he would not issue any order to stop.

Question. Why were I. B. E. W. organizers allowed to enter the plants and solicit employees during working hours while United organizers were denied that privilege?

Answer. The respondents have never policed their buildings and did not intend to begin now.

A shout from the floor accusing Carlisle of having "sold 40,000 employees down the river" evoked considerable applause.

Carlisle departed and shortly thereafter, upon adjourning, Ganley announced that there would be another meeting on the following day for the purpose of forming an independent union. A meeting for such purposes was apparently never held, but a meeting of the general councilmen of the Plan at Consolidated Edison Company of New York, Inc., called by Ganley, was held in the board room of the company. At this meeting, Ganley and a number of Plan officials decided to see Tracy at the Hotel Roosevelt in New York City. Tracy informed them that the I. B. E. W. intended to establish seven locals and that each of the Plans could shift over to the I. B. E. W. as a corresponding local retaining Plan officers as officers of the local. The Plan officials returned to the meeting and 22 general councilmen signed a petition for an I. B. E. W. charter. They then went back to Tracy and a local was chartered. Such was the birth of Local B-829. Thereafter, on May 4, 1937, the 22 signers of the petition held an election among themselves and elected the officers of the Plan to comparable positions in Local B-829.

After Local B-829 was chartered on April 23, the officials and councilmen of the Plan at Consolidated Edison Company of New York, Inc., availing themselves to the full of their privileges as Plan officials to devote full time to Plan affairs, commenced a campaign for membership in the I. B. E. W.

and were paid their regular salaries by the company. Straub, at first attracted by the idea of going over to the I. B. E. W., grew lukewarm. In the election of May 4, he refused a position as an officer in Local B-829, but continued to assist in procuring members and collecting dues, devoting a large portion of his working hours to the task and receiving his regular salary from the company. He was reproached by Ganley, who had become president of Local B-829, for lack of enthusiasm. Finally, on May 14, he joined the United.

In his talk with Stilwell on April 20, Straub had asked to be transferred to a job under different supervisors, but still in his home area, The Bronx, because in his capacity of chairman of the general council he had antagonized certain supervisors who, upon the dissolution of the Plan, would make it uncomfortable for him. On May 21, 1937, he was transferred to cable-splicing in Manhattan. Upon inquiry he was informed that the transfer was the result of large shifts of workmen in the respondents' system. In this fashion, after he had joined the United and proved himself an obstacle to I. B. E. W. organization in The Bronx, he was transferred from his home area where his influence with the employees was greatest.

The establishment of all the locals of the I. B. E. W. substantially conformed to the pattern of the establishment of Local B-829, with most of the officers of the Plans throughout the respondents' system becoming officers of the corresponding I. B. E. W. locals and continuing to exercise their privileges as Plan officers for several weeks after the I. B. E. W. locals were chartered, devoting all their working hours to I. B. E. W. organization, using the respondents' offices and secretarial services, and utilizing the respondents' expense accounts. During all this time they were paid their regular salaries by the respondents.

Evidence specifically adduced at the hearing discloses that the respondents pursued additional methods of coercing their employees into membership in the I. B. E. W. The department heads and foremen during working hours solicited employees to join the I. B. E. W., and generally assumed the role of I. B. E. W. organizers. The sanction behind the solicitation was clearly revealed in the accompanying advice and admonitions to the effect that the respondents desired them to become members of the I. B. E. W. and that sensible employees would conduct themselves accordingly.

The respondents allowed to I. B. E. W. organizers free access to all the respondents' buildings and permitted them to solicit employees individually and in groups during working hours, while similar privileges were denied to United organizers. I. B. E. W. delegates were also permitted to collect dues on the respondents' premises. They availed themselves, for that purpose, of offices of foremen or other offices or rooms and, in some instances, hung signs upon the doors bearing the legend "Pay A. F. of L. Dues Here." Later the practice of hanging up such signs was discontinued and foremen adopted the practice of telling the employees to go down to some office on the premises and pay their dues. Similar privileges were denied to the United.

I. B. E. W. officers remained in the employ of the respondents, exercising their Plan prerogatives in behalf of the I. B. E. W., for several weeks, and it was only shortly prior to the execution of the contracts between the respondents and the I. B. E. W. locals that they resigned from the respondents' employ to become full time I. B. E. W. officers paid by the I. B. E. W. Carlisle testified that the respondents permitted the Plan officers to retain their offices and to exercise their prerogatives in order to give them an opportunity to wind up their affairs. It appears from the evidence, however, that the respondents knew that the Plan officers had shifted over to the I. B. E. W. and had utilized their Plan prerogatives in behalf of the I. B. E. W. Moreover, it is clear that the respondents had intended as much. Carlisle also testified that he had given no orders to the respondents' department heads and foremen to act in behalf of the I. B. E. W. Express orders, however, were unnecessary as the respondents' position had been made abundantly clear, with the result that their supervisors took the steps appropriate for its attainment.

The evidence reveals the delineations of the respondents' design to dictate to their employees the choice of their bargaining representative. The first step was to favor the I. B. E. W. by according it recognition at a time when its membership was negligible and its organization hardly commenced and when the respondents knew that the United was the only active labor organization among its employees. The next step was to deliver over the Plan organizations to the I. B. E. W. by making the respondents' position in the

matter clear to the Plan representatives. Then followed the organizational drive in behalf of the I. B. E. W. by department heads, foremen, and Plan representatives, leading up to the stage of organization contemplated by Carlisle and Tracy as sufficient to justify the execution of contracts.

C. Execution of the Contracts With the I. B. E. W. Locals

After the I. B. E. W. had established its seven locals and had procured a membership therein, the respondents, in the period between May 28 and June 16, the latter date being subsequent to the commencement of the hearing, entered into seven substantially similar contracts with the seven I. B. E. W. locals.[2] The contracts conformed in most respects to the proposed contract which accompanied Tracy's demand for recognition on April 16. The contracts in terms recognized the I. B. E. W. as the representative of its members

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[2] The contracts were executed on the following dates:

1. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B830, applicable to gas workers. Respondents' Exhibit No. 17.

2. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B829, applicable to electric workers. Respondents' Exhibit No. 18.

3. May 28, 1937—Contract between Brooklyn Edison Company, Inc., and Local B-825. Respondents' Exhibit No. 19.

4. June 1, 1937—Contract between New York and Queens Electric Light and Power Company and Local No. B-839. Respondents' Exhibit No. 20.

5. May 28, 1937—Contract between Westchester Lighting Company and The Yonkers Electric Light and Power Company and Local No. B-832. Respondents' Exhibit No. 21.

6. June 16, 1937—Contract between New York Steam Corporation and Local No. B-826. Respondents' Exhibit No. 826.

7. The respondents did not introduce into evidence the contract executed between Consolidated Telegraph and Electrical Subway Company and an I. B. E. W. local, but stated that the contract was substantially similar to the above contracts and executed during the same period.

and were applicable only to such members.[3] The contracts also provided for certain wage increases and a procedure for settling grievances which outlawed strikes and lockouts, and prohibited discrimination by the respondents against any employee because of membership in the I. B. E. W. and coercion by the I. B. E. W. of any employees into joining the I. B. E. W. or solicitation of membership on the respondents' time and property.

Carlisle testified that he was aware that when recognition was conferred upon the I. B. E. W. on April 20, 1937, it had not as yet completed its organization and that such recognition contemplated the establishment of locals, with committees of which contracts would be subsequently executed. He further stated that at the time of the execution of the contracts he was in possession of no definite information concerning the size of the membership in each local, except newspaper reports. He admitted that the I. B. E. W. did not discuss the matter at that time. It was only on July 29, 1937, after the contracts had been made and the presentation of the Board's case in the hearing herein completed, that the I. B. E. W. submitted a statement[4] of its membership to him. This consisted merely of a typewritten statement showing the number of eligible employees and the number of members in each local. The statement indicated that a majority of the employees eligible for membership in each local were members of the local, except in the case of Local B-829, to which were eligible 13,200 electric employees of Consolidated Edison Company of New York, Inc.

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[3] Recognition of the I. B. E. W. was accorded by the particular respondent granting the contract in the first sentence of Article II of each contract, as follows:

"The * * * Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of The Brotherhood."

The statement of the applicability of each contract is contained in Article I thereof, as follows:

"This agreement shall apply to all employees of the * * * Company who are members of the Brotherhood * * *."

[4] Respondents' Exhibit No. 16.

This latter exception has particular significance in view of Carlisle's construction of the contracts as exclusive collective bargaining agreements.

Carlisle testified that the contracts were applicable to all employees and were exclusive collective bargaining agreements, i.e., that the respondents would not enter into collective bargaining agreements with any other labor organizations during the existence of the contracts. He thus in effect admitted that he had recognized and entered into contracts with the I. B. E. W. locals as the exclusive bargaining representatives of the respondents' employees at a time when he did not know the size of their membership and when even as late as June 29, Local B-829 did not have a membership of a majority of the employees within its jurisdiction.

It is clear from the evidence that the contracts were not the result of unhampered bargaining, but were rather the culmination of a plan by the respondents to select the I. B. E. W. as the exclusive representative of the respondents' employees and at the same time deal a blow to the United which they opposed. Carlisle's interpretation of the contracts, despite the express limitation of the representation of the I. B. E. W. to its own membership, discloses the force of the blow dealt the United, namely, the denial of the opportunity to bargain collectively with the respondents during the life of the contracts.

D. Conclusions as to the Respondents' Relations With the I. B. E. W.

We conclude that after April 12, 1937, the respondents deliberately embarked upon an unlawful course of conduct, as described above, which enabled them to impose the I. B. E. W. upon their employees as their bargaining representative and at the same time discourage and weaken the United, which they opposed. From the outset the respondents contemplated the execution of contracts with the I. B. E. W. locals which would consummate and perpetuate their plainly illegal course of conduct interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to them under Section 7 of the Act. It is clear that the granting of the contracts to the I. B. E. W. by the respondents was a part of the respondents' unlawful course of conduct and as such constituted

an interference with the rights of their employees to self-organization. The contracts were executed under such circumstances that they are invalid, notwithstanding that they are in express terms applicable only to members of the I. B. E. W. locals. If the contracts are susceptible of the construction placed upon them by the respondents, namely, that they were exclusive collective bargaining agreements, then, a fortiori, they are invalid.

In order to establish conditions for the exercise of an unfettered choice of representatives by the respondents' employees, the respondents will be ordered to cease and desist from giving effect to the contracts with the I. B. E. W. locals, from recognizing the I. B. E. W. as the exclusive bargaining representative of their employees, and from their other unlawful conduct; and to post notices that they will so cease and desist, that their employees are free to join any labor organization, and that the respondents will bargain collectively with any labor organization entitled thereto.

E. Employment of Industrial Spies

The complaint alleges that the respondents had employed and were employing industrial spies or under-cover operatives for the purpose of disclosing to them the activities of their employees in and on behalf of labor organizations. The respondents admitted the employment of detectives, but denied that it was for the purpose of investigating the union activities of their employees. The respondents asserted that in any event the employment of detectives did not extend beyond November 1936 and that consequently the controversy on this issue has become moot.

Uncontroverted evidence discloses that the respondents engaged the detective services of Railway Audit and Inspection Company, herein called the Inspection Company, from October 1933 through October 1936. The manager of the New York office of the Inspection Company testified that the services rendered to the respondents included investigation of the union activities of the respondents' employees. Frequently the respondents would send circulars, leaflets, and other literature to the Inspection Company for investigation by its detectives. Among the various types of literature of this character were included the circulars and leaflets of the Independent Brotherhood, some of which contained the names of the leaders of that organization.

Detectives of the Inspection Company also covered several of the meetings and conventions of the Independent Brotherhood throughout the year 1935. The Inspection Company made reports of its investigations and delivered them to the respondents.

The manager of the Inspection Company and one of the detectives who did the investigating, testified that detectives trailed Stephen L. Solosy, named in the complaint, and Philemon Ewing, both organizers for the Independent Brotherhood in Manhattan, in April 1935. The detective who trailed Solosy was given a picture of him and told to trail him, which he did for two days, after which time he was replaced by another detective whose report was delivered to the respondents. Solosy was unaware that he was being shadowed, but Ewing was exasperated by the ineptitude of the detective who trailed him and finally turned around and entreated him to perform his duties with more adroitness. Both Solosy and Ewing were discharged on January 17, 1936, and as we find below, one of the factors leading to Solosy's discharge was the report of his activities made by the Inspection Company. The respondents apparently still have in their possession the reports of the Investigation Company and so have the power to utilize them as a basis for future discriminatory action against their employees.

The respondents' contention that the controversy is moot on this issue because the evidence does not show that the respondents employed the Inspection Company for any purposes after November 1, 1936 is without merit. The evidence clearly discloses that the respondents engaged in an unfair labor practice for three years, up to a time not long prior to the filing of the charge herein. A discontinuance at that time of hiring one outside detective agency for that purpose is no assurance that the practice may not have been carried on by other outside agencies or by the respondents' own employees, or that the practice will not be resumed in the future. The respondents have not stipulated that they would not engage in this practice, but on the contrary have from the outset denied the jurisdiction of the Board to take any action in this proceeding.

F. The Discriminatory Discharges

1. Wersing, Greulich, and Wagner

The complaint alleged that on November 29, 1935, the respondents discharged, and thereafter refused to reinstate,

Martin A. Wersing, Julius A. Greulich, and Michael A. Wagner, because of union activities. The answer avers that they were discharged for other reasons. Since all three men were employed by New York and Queens Electric Light and Power Company, performed substantially similar work, were the organizers and officers of Local No. 103 of the Independent Brotherhood, were discharged at the same time, and were given the same explanation for their discharge, we will first narrate the employment history of each of them and then discuss their union activity and discharges as a group.

Wersing.—Wersing began work for the respondents on October 8, 1929, as a second grade clerk at a weekly salary of $22.00. All his work was performed during the night. After about six months he was transferred to other night work called "cut in and cut out," which involved making initial and final bills on consumers' accounts. Two months thereafter he received the regular two dollar weekly salary increase which followed upon a satisfactory probationary period. In 1933 he was transferred to day work at the personal request of J. Smith, a supervisor. Wersing found the work dull and about eight months later was transferred back to night work. Early in 1935 he filed an application for a day work position in response to a posted notice that the position was available. The position was obtained by an employee with less seniority than Wersing. A committee of the Independent Brotherhood took the matter up with the respondents and were informed that Wersing had filed his application too late. Subsequently, in May 1935, he was transferred to day work in the stores accounts division of the auditor's department. Although he replaced an employee with a first grade clerk rating, his own rating continued as second grade clerk. He brought this fact to the attention of his supervisor and later of the personnel bureau, from which he received a final, unfavorable communication about two weeks before his discharge.

While Wersing was not an exceptional employee, he performed his duties competently. When he was employed on night work his supervisor conferred some responsibility upon him and allotted to him the instruction of new employees as an additional duty. His supervisor on the work which he was performing prior to his discharge considered his work satisfactory. At the time of his discharge his

weekly salary was $23.00. A general reduction in pay in 1933, which was not fully restored, accounts for the fact that his salary was less at this time than at an earlier stage of his employment.

Greulich.—Greulich began his employment with the respondents on October 3, 1929, as a clerk at a weekly salary of $25.00. He received the customary two dollar weekly salary increase after six months' employment. In 1933 his pay was reduced 8⅓ per cent in conformity with the general pay reduction enforced throughout the respondents' system. In May 1934, one-half of the pay reduction was restored. Thereafter his weekly salary was increased to $27.00 as a result of a reclassification of his position. He received an additional increase in salary subsequently, so that at the time of his discharge his weekly salary was $28.75.

Greulich, like Wersing, worked in the stores accounts division of the auditors' department. Greulich devoted a large portion of his time to writing letters in response to a particular kind of correspondence and was the only one in the division performing that type of work. He also performed the added task of checking the work of twelve girls. He was never disciplined or suspended, but, on the contrary, was commended by his supervisor, at whose request he undertook to write items for the respondents' magazine.

Wagner.—Wagner began his employment with the respondents on July 23, 1929, as a first grade clerk at a weekly salary of $27.00. Six months thereafter he received the regular two dollar increase in salary. In March 1931 he was advanced to the position of accounting assistant in the fixed capital division of the auditors' department at a weekly salary of $32.00. His work consisted of preparing the monthly authorized fixed capital expenditure reports. He was the only one in the department who performed the work on the figures. In November 1934, he received an increase of $3.83 in his weekly salary as a result of a reclassification of his position. At the time of his discharge his weekly salary was $34.50.

Wagner's work was frequently commended by his supervisors. The respondents admitted and their records show that Wagner was rated as an exceptionally able and diligent employee.

Their union activity.—All three men became members of the national organization of the Independent Brotherhood

in February 1934. Thereafter they organized Local No. 103 among the employees of New York and Queens Electric Light and Power Company. In July 1934 Local No. 103 held its first meeting, at which Wersing was elected acting president and Greulich and Wagner were elected to the Executive Board. Throughout the year 1934 they were actively engaged in securing membership and in distributing circulars, leaflets, and a magazine called "The Tower Man", all issued by the national organization of the Independent Brotherhood. They became members of the Plan in April 1934, but Wersing resigned therefrom in December 1934, and Wagner in the early part of 1935. In September 1934 they formulated a petition of grievances, concerned chiefly with the restoration of the general pay reduction, which was finally presented to the management by a committee appointed by the general council of the Plan, after much persuasion by Wersing, Greulich and Wagner. They asserted that the restoration in 1934 of one-half of the 8⅓ per cent pay reduction was induced by their activity for wage increases. Thereafter they persistently attacked the Plan as a company-dominated union. In February 1935 Wersing was elected president of Local No. 103, Greulich vice-president, and Wagner treasurer. After their election to these offices they informed their supervisors of that fact by letter and received either written or oral acknowledgment of their letters. Thereafter Local No. 103 issued its own leaflets, circulars, pamphlets, and a monthly magazine called "Live Wire", attacking the Plans, listing grievances against the respondents, and explaining its own aims and policies. A number of articles appearing therein were over the signatures of Wersing and Greulich who wrote most of the Local's literature of this character. They also were actively engaged in soliciting membership by visiting employees at their homes. All this activity continued throughout 1935, and if anything, was intensified shortly prior to their discharge.

In March 1935 Wersing and Greulich conferred with Harry Snyder, president of New York and Queens Electric Light and Power Company, with respect to the assignment of an employee with less seniority to a day work position for which Wersing had applied, as related above. In August 1935 Wersing became President of the joint board composed of representatives from all the Independent Brotherhood locals in New York City. In the fall of 1935

there were rumors of impending lay-offs. Local No. 103 and the joint board, under the guidance of Wersing, Greulich, and Wagner, undertook to prevent the impending lay-offs by appearing at rate hearings before the Public Service Commission, by writing to Governor Lehman, Mayor La Guardia, and Chairman Maltbie of the Public Service Commission. They also issued a considerable quantity of literature in opposition to the impending lay-offs.

Just prior to their discharge there appeared in the "Live Wire" a signed article by Wersing entitled "Turkeys or Lay-offs for Thanksgiving". About two weeks prior to their discharge Greulich, who was still a member of the Plan, appeared at a meeting of the Plan members to distribute Independent Brotherhood literature and was promptly ushered out by Plan officials. The next day his supervisor, without especial rancor, informed him that he did not consider his actions on the preceding day as strictly ethical. On November 15, 1935, a committee composed of Wersing, Greulich, and Wagner, had a conference with Harold Dean, Vice-president and general manager of New York and Queens Electric Light and Power Company, concerning the discharge of James Mannix, an active member of the Independent Brotherhood. They were satisfied with the reasons given for his discharge and did not press the matter further. Dean, however, expressed a strong antipathy to the presumption of the committee in attempting to interfere with the exercise of his discretion to discharge employees.

Thus immediately preceding their discharge their union activity had become intensified, while the chief result of their interview on November 15, with Dean, who was in charge of the execution of the respondents' labor policy at New York and Queens Electric Light and Power Company, was the likelihood that the memory of a disagreeable episode would linger in Dean's mind.

Their discharge.—All three men were discharged on November 29, 1935, without notice, but receiving two weeks' pay in lieu of notice. Wersing and Greulich, who both worked in the stores account division of the auditor's department, were notified of their discharge at the same time by their supervisor, who told them to see Mr. Payne in the Personnel Bureau. When they arrived in Payne's

outer office the next morning, they saw Wagner leaving Payne's office. Wersing and Greulich had separate interviews with Payne. The accounts of all three men of their interviews with Payne are substantially the same. Payne informed them that they were being laid off because the respondents were discontinuing a department and that it was necessary to absorb a portion of the employees employed in that department into other departments. He stated that married men were being given perference over single men and that since all three of them were single their turn to be laid off had arrived. Each of the three men pointed out that other single men and girls with less seniority were retained, and requested an explanation. Payne was unable to explain this fact. The respondents have not requested any of the three men to return to their employment.

The respondents maintain that the three men were laid off for the following reason. The inventory department was engaged in compiling reports required by the Public Service Commission. A substantial number of the employees in that department were transferees from other departments. The department had grown into a body of 300 employees. In 1935 the Public Service Commission's requirements as to reports were so greatly reduced that the respondents found it necessary to discontinue or substantially reduce the department. In transferring employees from the inventory department back to other departments the respondents adopted the standard of favoring married men as against single men, all other things being equal. It was asserted that the discharge of the three men was the consequence of the application of this standard.

The respondents' contention that the inventory department was being reduced and transfers of employees made to other departments, thereby causing lay-offs of employees in such other departments, is supported by the evidence. In August 1935, 25 employees were laid off as a consequence of the application of this policy, but no employees were laid off in the auditors' department. On November 29, 1935, the three employees were the only employees laid off in their respective divisions. Dean, in his testimony, did not explain why certain single employees with less seniority were retained, except for the general statement that the department heads in the exercise of their judgment, determined

that a number of single employees with less seniority than these three men were more deserving of retention in their jobs because of special qualifications. Such an explanation, however, is unsatisfactory in the case of Wagner, at least. According to the respondents' own records he was regarded as an exceptionally able and diligent employee. In the application of the respondents' standard of preference to married men, other things being equal, Wagner would certainly not be the first and only man in his division to be laid off. Since he was laid off at the same time as Wersing and Greulich, his fellow officers in the Independent Brotherhood, a finding that he was discharged for union activity would be strong evidence that the other two men were discharged for the same reason.

It is significant that by the discharge of these three employees the respondents eliminated from their employ all the officers of Local No. 103 at a time when their union activities were beginning to prove troublesome to the respondents. Dean's explanation for their discharge, particularly the discharge of Wagner, is inadequate and not persuasive, in the face of the retention of a number of single men and girls with less seniority in their divisions, and an even larger number in their department. The evidence indicates rather that the respondents unfairly utilized the lay-offs consequent upon the discontinuance of the inventory department as a means of discharging the three officers of the Independent Brotherhood, whom they wished to eliminate from their employ because of their union activity.

We find that Wersing, Greulich, and Wagner were in fact discharged because of their activities in the Independent Brotherhood. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Since his discharge Wersing has devoted all his time to union affairs, and all his earnings from that time until the date of the hearing have been as a union officer. At the time of the hearing he was president of the United Local No. 1212 and chairman of the field representatives of the utilities division of the United. Greulich has been employed since March 1936, by the Federal Writers' Project. Wagner was out of employment until May 13, 1937, when

he secured employment with a laundry company at a weekly salary of $17.00. All three men desire their jobs back. We find that Wersing, Greulich, and Wagner have not, since their discharge, obtained any other regular and substantially equivalent employment.

2. Kennedy and Emler

The complaint alleged that on June 19, 1936, the respondents discharged, and thereafter refused to reinstate William J. Kennedy and John F. Emler, because of union activity. The answer avers that they were discharged for other reasons. Both men were employed as linemen in the overhead bureau of New York and Queens Electric Light and Power Company, were discharged on the same day, and were given identical explanations for their discharge. We will relate the history of the employment and the union activity of each of them separately and then discuss their discharges as a single incident.

Kennedy.—Kennedy worked for this company during 1923 and 1924 as a meter-tester. He resigned and subsequently reentered its employ on January 18, 1928, as a first grade lineman's helper at $29.90 weekly. In 1929 he became a third class lineman at $31.90. Thereafter he was advanced to the position of second grade lineman and in 1934 to that of first class lineman, in which position he was employed at the time of his discharge at a weekly salary of $40.48. His steady advancement is an indication of his competency as a workman. He had also gained experience in underground work and as a "troubleshooter", the latter job ranking just above first class lineman. The respondent's employment records show that during the year prior to his discharge, Kennedy was absent from his work for more than normal periods, but this was caused by illness and time spent in a hospital. He testified that his illness arose out of the character of his work, which often involved working in muddy ditches during inclement weather, and that the respondents' own doctor treated him and advised him to go to a hospital.

In 1934 Kennedy became a member of the Plan and was elected bureau representative for more than 300 employees in the overhead bureau. Shortly thereafter he became convinced that the Plan was a company-dominated union and was not hesitant about stating his views. In November

1934 he met Wersing, joined the Independent Brotherhood, and thereafter became very active in soliciting members. In February 1935 he was elected general manager of Local No. 103. At several meetings of the Plan in the early part of 1935 he spoke of the futility of the Plan. At approximately this time he sought to resign from his position as overhead bureau representative in the Plan. He communicated his intention to his supervisor, who urged him not to resign as it would create an unfavorable impression toward the Plan. Kennedy yielded, but was later informed by the chief officer of the Plan that his supervisor had suggested expelling "that radical", Kennedy, from the Plan. At a meeting of the Plan held thereafter Kennedy taxed his supervisor with having uttered the above statement, which his supervisor parried with a query as to what other course was open to him as a representative of the management. At a special meeting of the Plan held shortly thereafter, one of the respondent's officials made an address containing references to certain radicals and agitators. Kennedy arose and remarked that it was obvious that the references were addressed to him, and that if they denominated his activities agitation, then he was an agitator. The respondent's official then made some remarks about misinterpretation and dropped the matter. At the Plan election in June 1935 Kennedy refused renomination. In August 1935 he was elected president of the national organization of the Independent Brotherhood, resigning from his position as general manager of Local No. 103, which was taken over by Wersing.

After the discharge of Wersing, Greulich, and Wagner, Kennedy was selected as chairman of a committee to negotiate with the respondent concerning the discharge of the three men. The committee had a conference with the president of the New York and Queens Electric Light and Power Company in December, 1935, at which Mayor La Guardia was present, but nothing was accomplished. The committee reported back to the members of Local No. 103, and were empowered by them to call a strike if necessary. Two representatives from the Labor Department of the State of New York strove to obtain a settlement with the respondents, but were unsuccessful. Kennedy decided not to call a strike, as the Christmas season was considered inopportune.

In April 1936 the Independent Brotherhood affiliated with the I. B. E. W. and Kennedy resigned his presidency of the Independent Brotherhood to become a rank and file member of the I. B. E. W. He decided at this time to run again for office in the Plan. On June 11, 1936, he was elected representative for the overhead bureau. He was discharged a week later on June 19, 1936.

Emler.—Emler began his employment with the respondent in July 1927 as a clerk at a weekly salary of $25.00. Shortly thereafter he was transferred to meter-setting at $27.00 weekly. At approximately six months' intervals he was advanced to lineman's helper in the overhead bureau, to third class lineman, to second grade lineman, and finally to first class lineman, the position he held at the time of his discharge at a weekly salary of $40.48. There had never been any complaints concerning his work and his steady advancement is testimony of his competency.

In April 1935 he became a member of the Independent Brotherhood. He devoted his spare time to organizational activity with Wersing and Greulich and talking in behalf of the Independent Brotherhood. In September 1935 he was elected to the executive board of Local No. 103. He was a member of the committee which negotiated for the reinstatement of Wersing, Greulich, and Wagner, and participated in the negotiations. He was also a member of the committee which in December 1935 was empowered to call a strike. At that time he was advised by his foremen that it would be foolish to call a strike. He continued his union activities until the time of his discharge on June 19, 1936.

Their Discharges.—On June 17, 1937, Kennedy and Emler, who were working on different field jobs, were informed by their foremen that Mr. Payne at the Personnel Bureau wished to see them. They had separate, but substantially similar, interviews with Payne. Payne informed them that he had bad news, that he had orders from the respondents to lay off "surplus employees", and that since they were surplus employees they were being laid off. Both men asked him the manner in which eight years of continuous service had achieved for them the status of surplus employees, but he was unable to explain. He told them that there was a possibility of securing work with Consolidated

Edison Company of New York, Inc., and gave them the name of a personnel officer of that company. Both men called there that afternoon, but were unable to see the personnel officer. The next morning they succeeded in obtaining an interview, at which they were questioned concerning their ability to perform certain technical electrical work. On learning that they were not qualified for such work, the personnel officer made some remarks about jobs as linemen's helpers at $30.00 a week, which were followed by the expression of his opinion that these jobs were probably all filled anyway. On June 19 they returned to Payne and were formally laid off, receiving their separation allowances of two weeks' pay for each year of service. Four other men were discharged during the same period, of whom two were union men and two were not. One of the nonunion men, Baake, received employment from Consolidated Edison Company of New York, Inc., while the other returned to his former job the next day. Kennedy testified that both he and Emler had seniority over a large number of employees in their bureau, and that they were the only first class linemen who were laid off, while there had been no prior discharges of first class linemen.

In December 1936 Payne notified Kennedy of an opportunity to secure employment with another public utility company, New York Dock Company. Kennedy notified his union, which in turn notified Emler. Emler called upon Payne, who told him to apply for work at the New York Dock Company, adding as a parting thrust that it would be embarrassing for the respondents if Emler resumed his "funny business" at his new job. Emler secured a lineman's job with the New York Dock Company, but at a weekly salary of $30.00, the salary paid to a lineman's helper by the respondents. He is still so employed at a weekly salary of $35.00. The respondents have not requested either Kennedy or Elmer to return to their employment.

The respondents contend that the discharges of Kennedy and Emler resulted from the reductions in the overhead bureau necessitated by the gradual change in the character of the work in Queens from overhead to underground. A number of the overhead workers were trained for underground work, while others had to be laid off. In this group were Kennedy and Emler. Dean, who testified to the above,

did not adequately explain why Kennedy and Emler were laid off, while men with less seniority were retained; nor did he adequately negative Kennedy's statement that after his discharge the men in the overhead bureau were placed on a six day week and that other men were transferred to his department.

It is most significant that the discharges occurred within a week after Kennedy's election as Plan representative for the overhead bureau. He had proved himself a source of trouble to the respondents when he previously held that position, and it was certain that he would now renew his activity within the Plan in opposition to the respondents' domination of the Plan. His election to that position, in spite of his open affiliation with an outside union, is an indication of the influence he wielded among the employees of the overhead bureau. Discharge would automatically terminate his membership in the Plan, or a transfer to another of the respondents' companies would automatically make him a member of the Plan of such other Company where he would not retain his position as a bureau representative. The evidence points to this as the true explanation for the course adopted by the respondents of giving him a choice between discharge and a transfer to an inferior position in another of the respondents' companies.

Emler was the last of the group associated with Wersing, Greulich, Wagner and Kennedy in the organization of Local No. 123 of the Independent Brotherhood. His discharge or transfer from Queens, coupled with that of Kennedy, would serve to remove the two principal, active union men who were associated with the three men originally discharged. Payne's admonition to him in December 1936 not to resume his "funny business" at the New York Dock Company clearly indicates how long-lived was the recollection of Emler's union activities in the minds of his supervisors.

Although the evidence supports the respondents' contention that the overhead bureau was being gradually reduced because of the change in the character of the work in Queens from overhead to underground, we find that the lay-offs incidental thereto were merely utilized to screen the respondents' true motive. We find that Kennedy and Emler were in fact discharged because of their union activity. The respondents thereby discriminated in regard to hire and

tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Kennedy operated a private club after his discharge, but testified that it was a losing venture. Since March 1937 he has been engaged as a paid organizer in the utilities division of the Committee for Industrial Organization. Emler has been working for New York Dock Company since December 1936 at a lower salary than that which he received in the employ of the respondents. Both Kennedy and Emler desire to return to their former positions in the employ of the respondents.

We find that Kennedy and Emler have not, since their discharges, obtained any other regular and substantially equivalent employment.

3. Solosy

The complaint, as amended, alleges that the respondents discharged Stephen L. Solosy on January 17, 1936, and thereafter refused to reinstate him, because of union activity. The answer avers that he was discharged for other reasons.

Solosy commenced work in October 1928 as a tester in the laboratory of Consolidated Gas Company of New York, which is now Consolidated Edison Company of New York, Inc. He left this employment in November 1928, but returned to work in January 1929 and continued in the respondent's employ until his discharge. After having worked in the laboratory for the first four months at a weekly salary of $20.00, he was transferred to work on instruments known as Thomas calorimeter inspectors, which measured the B. t. u. content of gas. His job was concerned with maintaining, servicing, repairing, and overhauling those instruments. At that time there were twenty-seven such instruments, situated at different places in the respondents' entire system. Solosy's work was thus performed in different places. He received periodic increases and at the time of his discharge was receiving a weekly salary of $33.54. No complaints or reprimands concerning his work were made. His steady increases in pay attest his competency.

Early in 1934 he became a member of the Federation of Architects, Chemists, Engineers, and Technicians, an independent union. Shortly thereafter he joined the Plan.

The members in his department elected him and Philemon Ewing to head a committee to investigate the Plan. He served on this committee for three months, rendering monthly reports to the effect that the Plan was a company-dominated union. In the latter part of 1934 he and Ewing joined the Independent Brotherhood. Both of them did a great deal of organization work in Manhattan for the Independent Brotherhood. His activity became open and known to the respondents at least as early as March 1935. As we have stated previously, during April 1935 he was trailed by detectives, and reports concerning his and Ewing's activities were filed with the respondents. In March 1935 Solosy and Ewing began to publish and distribute a monthly paper called the "Gas Man". Its last issue appeared in November 1936. Both Solosy and Ewing solicited employees at their homes for membership in the Independent Brotherhood, securing at least 25 members in the latter part of 1935. Solosy and Ewing were the only employees in their department who were vigorously engaged in union activity.

Solosy and Ewing were discharged at the same time and in the presence of each other. Solosy was told that he was being laid off because the respondents were shutting down the "A" plant of the Astoria Light, Heat, & Power Company, thereby necessitating the laying-off of a number of employees. It appears that the "A" plant was in fact shut down, probably because of the decrease in the amount of gas sold. Solosy was not given previous notice of his discharge, but was given his separation allowance. He pressed his supervisor for further reasons concerning his discharge and received the following cryptic reply, "You know more about it than I do". In answer to a question whether he would ever be called back, his foreman said that he thought not. The respondents have not requested Solosy to return to their employ.

It appears from the evidence that although there were a few others discharged at the same time with Solosy and Ewing, Solosy was the only one in his division who was discharged. There were only seven employees in his division. Solosy testified that of the other six employees he had seniority over two.

It is significant on the one hand that Solosy and Ewing were the only active union men in their department and that their activities were investigated by detectives and reports

of their activities filed with the respondents. On the other hand there is an absence of any adequate explanation for Solosy's discharge while two fellow employees with less seniority were retained. The evidence clearly indicates that the reduction of employees necessitated by the shutting down of the "A" plant was utilized as a screen to conceal the true motive for his discharge.

When we consider all the six discharges involved in this case, it is apparent that the respondents succeeded in eliminating from their employ all the principal organizers and officers of the Independent Brotherhood. Their success was too complete to have been a consequence of the disinterested operation of reductions in personnel.

At the hearing the respondents were not allowed to introduce the testimony of Solosy's supervisors when offered at the continuance on July 6, 1937. The respondents offered no good reason for their failure to produce these witnesses at the close of the Board's case on June 24, 1937. They cannot complain of the Board's refusal to admit the testimony when the hearing was resumed two weeks later for the purpose of receiving the testimony of Carlisle and Dean.

We find that Solosy was in fact discharged because of his union activity. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Solosy has been unemployed since his discharge. He desires to return to his former position in the employ of the respondents. We find that Solosy has not, since his discharge, obtained any other regular and substantially equivalent employment.

IV. Effect of the Unfair Labor Practices Upon Commerce

Upon the whole record we find that the activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, transportation, and communication among the several States and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions of Law

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. United Electrical and Radio Workers of America, and its predecessor unions, and International Brotherhood of Electrical Workers are labor organizations within the meaning of Section 2 (5) of the Act.

2. Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy were, at the times of their discharges, and at all times thereafter, employees of the respondents, within the meaning of Section 2 (3) of the Act.

3. The respondents, by discriminating in regard to the hire and tenure of employment of Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy and thereby discouraging membership in United Electrical and Radio Workers of America and its predecessor unions, have engaged in and are engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

4. The respondents, by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, have engaged and are engaging in unfair labor practices, within the meaning of Section 8 (1) thereof.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

6. The respondents have not engaged in unfair labor practices within the meaning of Sections 8 (2) of the Act.

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting

Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to joint or assist International Brotherhood

of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.

Signed at Washington, D. C., this 10th day of November, 1937.

J. Warren Madden, Chairman; Edwin S. Smith, Member; Donald Wakefield Smith, Member, National Labor Relations Board. (Seal.)

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ETC., ET AL., Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review an Order of the National Relations Board

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION TO REVIEW AND REQUEST FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—Filed December 6, 1937

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board (hereinafter called the Board) by J. Warren Madden, as Chairman and Member of said Board, and Edwin S. Smith, and

Donald Wakefield Smith, as Members thereof, and, pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C. A., sec. 151 et seq.), files this answer and request for the enforcement of an order of the Board. In filing this answer and request for enforcement, the Board feels obliged to call the Court's attention to the unduly prolix and argumentative character of the so-called petition to review. It does not conform to the requirements of a pleading and to proper practice under the National Labor Relations Act. It is in reality in the nature of a lengthy brief, accompanied by reprints of portions of the record, upon points petitioners will make when the case is subsequently heard before this Court. As a consequence, the Board has found it necessary in answering numerous paragraphs of the petition to refer the Court to the actual record of the proceeding before the Board, since any attempt to answer fully the argumentative and incomplete allegations of those paragraphs would require the reproduction in this answer of a considerable part of the entire record before the Board.

1. The Board admits each and every allegation contained in paragraphs "1," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "13," "14," and "15" of the petition to review, except that it denies that the petitioners and each of them are engaged in a local business; and further answering, avers that the operations of petitioners and each of them have a close, intimate and substantial relation to trade, traffic, commerce, transportation, and communication among the several states and with foreign countries.

2. The Board admits each and every allegation contained in paragraphs "16" and "17" of the petition to review.

3. The Board denies each and every allegation contained in paragraph "18" of the petition to review, except that it admits that following the enactment of the National Industrial Recovery Act in 1933 certain organizations known as Employees' Representation plans (hereinafter called the Plans) were established among the employees of each of the petitioners and of the companies which were merged in 1936 into Consolidated Edison Company of New York, Inc.; and further answering, avers, however, that the Plans were established with the assistance and at the behest of

petitioners, that the organization and operation of the Plans was at all times financed exclusively by petitioners, that petitioners' employees became members of the Plans because such action accorded with the patent desire of petitioners, that although the Plans were established as a means of purported compliance with the National Industrial Recovery Act and for purposes of collective bargaining with petitioners, no collective bargaining activities took place, that as a result of this and the failure of certain of petitioners' employees to secure action on a petition of grievances through the general council of the Plans and of a subsequent investigation of the Plans, there arose a conviction among petitioners' employees that the Plans were under petitioners' domination, and that thereafter, and as a result of the foregoing, there was formed in March 1937 Local No. 1212 of the United Electrical and Radio Workers of America, comprising all of the members formerly belonging to Local No. B-752 of the International Brotherhood of Electrical Workers (hereinafter called the Brotherhood), and that when Local No. 1212 in April 1937 instituted a campaign to organize petitioners' employees, petitioners countered with a drive to procure the signatures of their employees in favor of a continuance of the Plans, which said drive by petitioners was interrupted by the decisions of the United States Supreme Court upholding the validity of the National Labor Relations Act.

4. The Board admits each and every allegation contained in paragraph "19" of the petition to review; and further answering, avers, however, that, on or about the time that petitioners notified their employees or the representatives of the Plans that they would no longer continue their financial support of the Plans, petitioners set forth their intention immediately to recognize the Brotherhood in the place and stead of the Plans and expressed through their principal executive officer their preference that their employees join the Brotherhood, despite the fact that at that time petitioners were aware of the meager membership of their employees in the Brotherhood, despite the fact that petitioners at that time knew that the members of Local B-752 of the Brotherhood had transferred their allegiance and became members of Local 1212 of the United Electrical and Radio Workers of America, despite the opinion of the Plan representatives that the sudden recognition of the

Brotherhood was a means of coercing them into joining the Brotherhood, and despite the request of several Plan representatives for a withholding of recognition of the Brotherhood until petitioners' employees had an opportunity to discuss the matter.

5. The Board admits each and every allegation contained in paragraph "20" of the petition to review; and further answering avers, however, that the alleged contractual relations between petitioners and the Brotherhood, were, as evidenced by respondents' (petitioners herein) Exhibit 23 in the proceedings before the Board, in substance and for the most part an agreement not to unionize petitioners and not to interfere or have any voice in their "*choice of method and personnel*" policies.

6. The Board admits each and every allegation contained in paragraphs "21" and "22" of the petition to review, except that it denies that the Employees Representation plan was maintained "in good faith" or that the contracts with the Brotherhood were entered into in good faith; and further answering, avers that following petitioners' recognition of the Brotherhood, officers of the various locals thereof, department heads and foremen were permitted to devote full or part time, as required, to campaign for membership therein among, and collect dues from, petitioners' employees during working hours and on petitioners' time, drawing their regular salaries from petitioners nevertheless; that this practice continued up until a short time before petitioners entered into formal contracts with the Brotherhood; that notwithstanding petitioners' lack of definite information as to the number of their employees that were members of the Brotherhood petitioners nevertheless executed the aforementioned contracts with the Brotherhood; that it was not until June 29, 1937, after the contracts were executed and the presentation of the Board's case in the proceedings had before it had been completed, that petitioners received a statement from the Brotherhood of its membership totals; that notwithstanding that this membership statement showed that one of the locals—Local B-829—did not represent a majority of the 13,200 employees eligible for membership therein, petitioners nevertheless continued to treat the contract with said Local B-829, as they did all of their contracts with the Brotherhood, an exclusive collective bargaining agreement in that petition-

ers would enter into no collective bargaining agreements with any other labor organization during the life of said contracts; that under all of the facts and circumstances petitioners did and intended to impose the Brotherhood upon their employees to the exclusion of the United Electrical and Radio Workers of America or any other labor organization; and that under all of the facts and circumstances of this case petitioners' contracts with the Brotherhood were invalid and contrary to law.

7. The Board denies each and every allegation contained in paragraph "23" of the petition to review, except that it admits the enactment of the New York State Labor Relations Act and the creation of the New York State Labor Relations Board thereunder; and, further answering, respectfully refers the Court to paragraph (1) herein of the Board's request for enforcement of its order for a brief statement of the applicability of the National Labor Relations Act to petitioner's operations and the employees herein involved.

8. The Board denies each and every allegation contained in paragraph "24" of the petition to review, except that it admits that on or about May 5, 1937, the United Electrical and Radio Workers of America, a labor organization, filed with the Board's Regional Director in New York City, in accordance with the provisions of Section 10 (b) of the National Labor Relations Act, a charge that petitioners had engaged and were engaging in certain unfair labor practices affecting commerce; and for a full, complete, and accurate description of the contents of said charge the Board prays reference to the original thereof certified to and filed with this Court herein.

9. The Board denies each and every allegation contained in paragraph "25" of the petition to review, except that it admits that on or about May 12, 1937, it issued, through its Regional Director in New York City, its complaint alleging that petitioners had engaged and were engaging in certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3), of the National Labor Relations Act, all in accordance with the provisions of Section 10 (b) of said Act, and for a full, complete, and accurate description of the provisions of said complaint the Board prays reference to the original thereof

certified to and filed with this Court herein. Said complaint and the notice of hearing accompanying it were served upon petitioners, the Brotherhood, and the United labor organization.

10. The Board denies each and every allegation contained in paragraph "26" of the petition to review, except that it admits that on or about May 17, 1937, petitioners filed in the proceeding then pending upon the complaint issued by the Board (known upon the records of the Board as Case No. C-245), a certain motion to dismiss said complaint and for a full, complete, and accurate description of the provisions of said motion to dismiss and the affidavit in support thereof, the Board prays reference to the original thereof certified to and filed with this Court herein.

11. The Board denies each and every allegation contained in paragraph "27" of the petition to review except that it admits that on or about June 14, 1937, in the course of the hearing then in progress upon the complaint issued by the Board, petitioners filed their verified answer to said complaint, which said answer, among other things, contains the matter quoted in paragraph "27" of the petition to review, and except that it admits that during the course of the said hearing petitioners made certain objections to the jurisdiction of the Board therein. For a full, complete, and accurate description of said answer and the said objections to the jurisdiction made in the course of the hearing by petitioners, the Board prays reference to the original of said answer and to the transcript of said hearing certified to and filed with this Court herein.

12. For lack of knowledge, the Board denies each and every allegation contained in paragraphs "28," "29," and "30" of the petition to review except that it admits that in the course of the hearing upon the complaint issued by the Board, petitioners offered in evidence as their (Respondents') Exhibits Nos. 1 and 2 the decree and certain related pleadings and proceedings in an action theretofore pending in the United States District Court for the Southern District of New York entitled Consolidated Edison Company of New York, Inc., et al. v. Lamar Hardy et al., and for a full, complete, and accurate description thereof the Board prays reference to said Exhibits Nos. 1 and 2 certified to and filed with this Court herein.

13. The Board admits each and every allegation contained in paragraph "31" of the petition to review; and further answering, avers that at no time did petitioners ever seek a hearing before the Board on any phase of the case other than the question of jurisdiction, and that at no time after the proceeding had been transferred to and continued before the Board in accordance with Article II, Section 37, of the Board's Rules and Regulations, Series 1—as amended, did petitioners seek a hearing before the Board on any phase of the case.

14. The Board denies each and every allegation contained in paragraphs "32," "33," and "34" of the petition to review, except that it admits that in the course of the hearing upon the complaint issued by the Board, the Trial Examiner designated by the Board granted certain motions to amend the said complaint, and for a full, accurate, and complete description of said motions and the amendments so granted and any objections thereto, the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that in the course of said hearing the Trial Examiner granted a motion by petitioner to amend its answer to the said complaint, and for a full, accurate, and complete description thereof, the Board prays reference to the record certified to and filed with this Court herein.

15. The Board denies each and every allegation contained in paragraph "35" of the petition to review, except that it admits that on July 6, 1937, the last day of the hearing before him, the Trial Examiner to a certain extent granted a motion to conform the complaint to the proof, and denied a motion by petitioners to submit certain additional proof since petitioners had failed to adduce such proof when the opportunity was afforded, and for a full, complete, and accurate description thereof the Board prays reference to the record certified to and filed with this Court herein.

16. The Board denies each and every allegation contained in paragraphs "36" and "37" of the petition to review, and for a full, complete, and accurate description of the allegations of the complaint as originally issued by

the Board, of the amendments thereto, and other proceedings had in said Case No. C-245 before the Board and referred to in said paragraphs "36" and "37" of the petition the Board prays reference to the transcript of the record therein certified to and filed with this Court herein.

17. The Board denies each and every allegation contained in paragraph "38" of the petition to review; and further answering, avers that the National Labor Relations Act is valid and constitutional under the Constitution of the United States and was validly and constitutionally applied by the Board in rendering its decision, including its findings of fact, conclusions of law, and order in the proceeding to be reviewed herein.

18. The Board denies each and every allegation contained in paragraphs "39" and "40" of the petition to review, except that it admits that there was received in evidence on June 3, 1937, the first day of the hearing before the Trial Examiner, as Board's Exhibit No. 2, a certain stipulation of facts bearing upon the nature and extent of the operations of petitioners, and except that it admits that further testimony was taken and evidence received at said hearing on June 10, 11, 14, 15, 16, 17, 23, 24, and on July 6, 1937.

19. Answering paragraphs "41," "42," "44," and "45" of the petition to review, the Board denies that the allegations of said paragraphs constitute a full, accurate, and complete description of the matters and events therein referred to, and for a full, accurate, and complete description thereof prays reference to the record of said proceeding as certified to and filed with this Court herein. The Board further denies that petitioners were denied a fair and full hearing by reason of any matter or thing referred to in said paragraphs "41," "42," "44," and "45."

Further answering, the Board affirmatively avers that at no time after the proceeding was transferred to and continued before it did petitioners apply to the Board for leave to adduce additional evidence, although petitioners had full opportunity to make such application.

Further answering, the Board affirmatively alleges that if petitioners have been aggrieved by any refusal of the Board or its Trial Examiner to permit petitioners to present testimony or evidence in the proceeding before the

Board, the statute affords petitioners now, before final hearing, the remedy therefor by application to this Court for leave to adduce additional evidence, under the following express provisions of Section 10 (e) of the National Labor Relations Act:

If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript.

20. The Board denies each and every allegation contained in paragraph "43" of the petition to review, except that it admits that on July 6, 1937, the last day of the hearing before the Trial Examiner, the Trial Examiner granted a motion by petitioners to amend their answer so as to plead an additional affirmative defense based upon the execution of certain contracts between petitioners and the Brotherhood and certain of its local unions, and for a full, complete, and accurate description of said amendment the Board prays reference to the record of said proceeding certified to and filed with this Court herein.

21. The Board denies each and every allegation contained in paragraphs "46," "47," "48," "49," "50," and "51" of the petition to review, except that, as to the allegations of paragraph "50," it admits that on or about September 29, 1937, in full compliance with the provisions of Article II, Section 37, of its Rules and Regulations, Series 1—as amended, it issued an order transferring the said proceeding to and continuing it before the Board, and for a full, complete, and accurate description of said order the Board prays reference to the record in said proceeding certified to and filed with this Court.

The Board further avers that at no time after the proceeding was transferred to and continued before the Board did petitioners make any application to it for a further hearing or for oral argument on any aspect of the proceeding, although petitioners had full opportunity and were free to make any such application.

The Board further avers that on or about July 15, 1937, petitioners submitted a full brief to it and that the said brief was duly considered in reaching its conclusions upon the matters set forth therein.

The Board further avers that the allegations contained in said paragraphs "46," "47," "48," "49," "50," and "51" are, for the most part, arguments and conclusions of law not appropriate to a petition for review of an order of the Board and do not require further answer herein.

22. The Board admits each and every allegation contained in paragraph "52" of the petition to review.

23. The Board denies each and every allegation contained in paragraphs "53" and "54" of the petition to review, except that it admits that petitioners (respondents below) introduced in evidence at the hearing as their Exhibits Nos. 17-22 certain contracts entered into in May and June, 1937, between petitioners and the Brotherhood and certain of its local unions, and except that it admits that petitioners introduced in evidence at the hearing as their Exhibit No. 16 a statement supplied to petitioners by the Brotherhood concerning the purported membership of petitioners' employees in certain Locals of the Brotherhood as of June 29, 1937, subsequent to an amendment to its answer granted at the hearing. For a full, complete, and accurate recital of the provisions of said amendment and of said contracts and statement the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that the said contracts were entered into under facts and circumstances and pursuant to conduct of petitioners violating the prohibitions of the National Labor Relations Act, all as more fully set forth in paragraphs 3, 4, and 6 hereof and as described in the decision of the Board certified to and filed with this Court, to which reference is hereby made, and that the said contracts are totally invalid and contrary to law.

24. The Board denies each and every allegation contained in paragraphs "55," "56," "57," and "58" of the petition to review, except that it admits that the proceeding before the Board was not a proceeding under Section 9 of the National Labor Relations Act for the investigation and certification of representatives of petitioners' employees for the purposes of collective bargaining, and except that it admits

that during the period from May 28 to June 15, 1937, petitioners executed with the Brotherhood the contracts introduced in evidence as petitioners' Exhibits Nos. 17 to 22, inclusive, and that the said contracts were the subject of prior discussion between Carlisle and Tracy.

Further answering, the Board avers that the said contracts are, for the reasons hereinbefore set forth, invalid and contrary to law.

25. The Board admits each and every allegation of paragraph "59" of the petition to review, but for a full, complete, and accurate recital of the provisions of the contracts therein referred to prays reference to the originals thereof included in the record certified to and filed with this Court herein.

Further answering, the Board avers that the various provisions of the said contracts are irrelevant and immaterial to the issues before this Court and that the said contracts, for reasons hereinbefore set forth, are invalid and contrary to law.

26. The Board denies each and every allegation contained in paragraphs "60" and "61" of the petition except that it admits that each of the contracts introduced in evidence as petitioners' Exhibits Nos. 17-22, inclusive, contain, in part, the provisions set forth in said paragraph "61" of the petition.

Further answering, the Board avers that the various provisions of the said contracts are irrelevant and immaterial to the issues before this Court and that the said contracts, for reasons hereinbefore set forth, are invalid and contrary to law.

27. The Board denies each and every allegation contained in paragraph "62" of the petition to review, except that for want of knowledge it denies that the arbitration proceedings therein referred to were announced or conducted, and except that it admits that on November 10, 1937, the Board issued its decision, findings of fact, conclusions of law, and order now under review herein, and except that it admits that each of the said contracts therein referred to contains provisions similar to those set forth in quotations in said paragraph "62" of the petition, but for a full, complete, and accurate recital of the provisions of said contracts the Board prays

reference to the originals thereof included in the record herein.

Further answering, the Board avers that the various provisions of the said contracts are irrelevant and immaterial to the issues before this Court and that the said contracts, for reasons hereinbefore set forth, are invalid and contrary to law.

28. The Board denies each and every allegation contained in paragraph "63" of the petition to review, except that for want of knowledge it denies that petitioner defended the constitutionality of the Social Security Act in the action therein referred to, and except that it admits that the contracts therein referred to contain certain provisions similar to those set forth in quotations in said paragraph "63."

Further answering, the Board avers that whether or not the petitioners have ever defended the constitutionality of the Social Security Act is, and the various provisions of the contracts therein referred to are, irrelevant and immaterial to the issues before this Court, and that, for reasons hereinbefore set forth, the said contracts are invalid and contrary to law.

29. For want of knowledge the Board denies each and every allegation contained in paragraphs "64" and "65" of the petition to review. Further answering, the Board avers that the allegations contained in said paragraphs are irrelevant and immaterial to the issues before this Court and that the contracts and amendments thereto in said paragraphs "64" and "65" referred to are, for the reasons hereinbefore set forth, invalid and contrary to law.

30. The Board denies each and every allegation contained in paragraph "66" of the petition to review.

31. The Board admits each and every allegation contained in paragraphs "67" and "68" of the petition to review, but for a full, complete, and accurate recital of the terms of its decision, findings of fact, conclusions of law, and order issued in the proceeding now under review herein prays reference to the original thereof as contained in the record certified to and filed with this Court herein.

32. The Board denies each and every allegation contained in paragraph "69" of the petition to review, including subparagraphs (a) to (ee) thereof, inclusive.

Wherefore, having duly answered each and every allegation contained in the petition to review, the Board prays the Court that the said petition be denied in so far as it prays that the Board's order be reversed and set aside and that no further proceedings be taken therein and also in so far as it prays that a restraining order be directed to the Board ordering a stay of all proceedings pending determination of the proceedings before this Court.

33. Further answering, the Board, pursuant to the authority conferred upon it by the provisions of the National Labor Relations Act respectfully requests the Court for the enforcement of the order issued by the Board in the proceeding instituted against petitioners, said proceeding being known upon the records of the Board as Case No. C-345, the title thereof being "In the Matter of Consolidated Edison Company of New York, Inc., and affiliated Companies, Brooklyn Edison Co. of New York, Inc., New York and Queens Electric Light and Power Co., Westchester Lighting Co., The Yonkers Electric Light & Power Co., New York Steam Corp., Consolidated Telegraph and Electrical Subway Company and United Electrical & Radio Workers of America, C. I. O. Local No. 1212."

In support of its request for the enforcement of said order the Board alleges:

(1)

Petitioners, Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company are, and at all times herein mentioned were, operating public utilities corporations organized and existing under the laws of the State of New York with their principal offices and places of business in the City of New York, and they are now and at all times hereinafter mentioned were engaged in the business of supplying electric energy to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and a part of the Borough of Queens, within the City of New York. The petitioner, Consolidated Edison Company of New York, Inc., is engaged also in the business of supplying gas to consumers situated in the Boroughs of Manhattan and The Bronx, and a part of the Borough of Queens, and in selling to manufacturers and jobbers in New York City for commercial purposes certain by-products incidental to

its manufacture of gas. Said petitioner, Consolidated Edison Company of New York, Inc., in addition to being an operating utility company, as aforesaid, is also a holding company owning controlling stock interests in the other petitioner companies herein, to wit: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electric Subway Company.

The petitioner, Westchester Lighting Company, is and at all times herein mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in Mount Vernon, New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying electricity and gas to consumers situated in Westchester County, New York, except the City of Yonkers.

The petitioner, The Yonkers Electric Light and Power Company, is and at all times herein mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in Mount Vernon, New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying electricity to consumers situated in the City of Yonkers, Westchester County, New York.

The petitioner, New York Steam Corporation, is and at all times hereinafter mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in the City of New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying steam to consumers situated within a part of the Borough of Manhattan.

The petitioner, Consolidated Telegraph and Electrical Subway Company, is a corporation organized and existing under the laws of the State of New York, and is now and at all times hereinafter mentioned was engaged in the business of constructing, equipping, maintaining, and operating under contracts with the City of New York, underground ducts or conduits for the reception of electrical conductors in the Boroughs of Manhattan and The Bronx.

Petitioners have for a long period of years been under a unified ownership, management, and operation, and the manufacturing plants, holder-stations, transfer and distribution lines and all other properties of said petitioners have been and are operated as a unified and interconnected system.

In the course and conduct of their business petitioners cause and have continuously caused the major portion of the raw materials, supplies, and equipment used in the production of all their electric energy, gas and steam to be purchased and transported in interstate commerce from and through states of the United States other than the State of New York to their plants and places of business in the State of New York and cause and have continuously caused the electrical energy, gas, and steam produced by them to be sold and supplied to various important businesses engaged in interstate and foreign commerce and vitally dependent upon the use of said electrical energy, gas and steam, including interstate railroads and ferries, telegraph, telephone, newspaper, and radio companies, the New York Stock Exchange, the United States Post Office, and the federal government and the City of New York in connection with navigation in the New York harbor; all of the aforesaid having a close, intimate, and substantial relationship to trade, traffic, communication, transportation, and commerce among the several states and with foreign countries, and to the operations of instrumentalities engaged therein, and being an integral part of the flow of trade, traffic, communication, transportation, and commerce among the several states and with foreign countries and of the operations of the instrumentalities engaged therein.

(2)

By reason of the provisions of Section 10 (f) of the National Labor Relations Act, this Court has jurisdiction of the petition herein and of this request for enforcement.

(3)

On the 12th day of May 1937, a charge theretofore having been filed with the Board by the United Electrical and Radio Workers of America, a labor organization (hereinafter called the United), the Board, by its Regional Director for the Second Region, duly issued its complaint in said

proceeding No. C-245, alleging that petitioners had engaged in and were engaging in certain unfair labor practices affecting commerce in violation of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, which complaint, together with a notice of hearing thereon, was duly served upon petitioners, the Brotherhood. and the United. Thereafter, on May 17, 1937, petitioners, appearing specially, filed a motion to dismiss the complaint for want of jurisdiction together with a request that the motion be heard and determined by the Board prior to hearing on the complaint. Petitioners' request for a prior and separate hearing on the motion to dismiss the complaint was thereafter denied by the Board. Thereafter, on or about May 25, 1937, the Regional Director issued and duly served an amended notice of hearing upon petitioners, the Brotherhood, and the United. On June 14, 1937, petitioners filed an answer to the complaint reserving their objections to the jurisdiction of the Board.

(4)

On June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, the Board, by a Trial Examiner, pursuant to due notice held a hearing in said proceeding at New York City. At the hearing petitioners reserved their objections to the jurisdiction of the Board and noted an exception to the order of the Board denying a prior and separate hearing on their motion to dismiss the complaint. Petitions to intervene, filed prior to the hearing by The Independent Gas and Electric Workers Union of Westchester County and by Independent Gas and Electric Union, were denied by the Trial Examiner after argument thereon. At said hearing testimony and other evidence with respect to the allegations stated in said complaint were adduced by the Board and by petitioners. On motion by counsel for the Board the complaint was amended without objection to include the name of Stephen L. Solosy in the allegations contained in paragraphs 19, 20, and 21 thereof. On further motion by counsel for the Board, and over petitioners' objections, the complaint was further amended so as to include within paragraphs 23 and 24 references to paragraph 22 thereof, and the said complaint was thereafter further amended to conform to the proof except insofar as the evidence related to the dis-

criminatory discharge of one Philemon Ewing who was not named in the complaint. On motion by counsel for petitioners the answer was amended to include as a separate defense allegations that certain contracts executed by petitioners with certain local unions of the Brotherhood had rendered moot any controversy raised by the complaint. At the close of the presentation of the Board's case, petitioners' motion to dismiss the complaint for lack of jurisdiction was renewed and denied.

(5)

On June 24, 1937, upon the completion of the Board's case, petitioners' counsel requested an adjournment to secure the testimony of Floyd L. Carlisle and Harold Dean, asserted to be indispensable witnesses. The sole reason offered by petitioners' counsel for not calling other witnesses at this time was that the Board had completed the presentation of its case sooner than was anticipated by petitioners. The Trial Examiner granted an adjournment until July 6, 1937, for the purpose of receiving the testimony of Carlisle only and reserved until that time decision as to whether the testimony of Dean and other witnesses would be taken when the hearing resumed, with permission to petitioners in the meantime to present the matter of taking the testimony of witnesses other than Carlisle directly to the Board. In answer to a request therefor the Board on July 2, 1937, advised petitioners that it would permit both Carlisle and Dean to testify at the adjourned hearing on July 6, 1937, but would not permit petitioners to adduce testimony from any other witnesses at that adjourned hearing on the ground that such other witnesses should have been produced on June 24, 1937, at the close of the Board's case.

(6)

Thereafter, on September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 37, of the National Labor Relations Board Rules and Regulations, Series 1, as amended.

(7)

Thereafter, on the 10th day of November 1937, the Board, having duly considered the matter, including the record made in the proceeding conducted by the Trial Examiner,

the stenographic report of the hearing and the evidence, both oral and documentary, and being sufficiently advised in the premises and being of the opinion upon all the testimony and evidence that petitioners had been and then were engaged in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, duly stated its findings of fact and conclusions of law and entered the following order directed to petitioners as follows:

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during work-

ing hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property, and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his dis-

charge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants, and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.

(8)

Said order was duly served upon petitioners, the Brotherhood, and the United, and is and has been at all times since its issuance in full force and effect.

Wherefore the Board prays this Court, pursuant to Section 10 (f) of the National Labor Relations Act, to take jurisdiction of this proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in such transcript, and upon the order of the Board, dated November 10, 1937, a decree enforcing in whole the said order of the

Board and requiring petitioners, their officers, agents, successors, and assigns to comply herewith.

Dated at Washington, D. C., this 3rd day of December 1937.

J. Warren Madden, Chairman; Edwin S. Smith, Member; Donald Wakefield Smith, Member, National Labor Relations Board. Charles Fahy, General Counsel; Robert B. Watts, Associate General Counsel, National Labor Relations Board.

Duly sworn to by J. Warren Madden et al. Jurat omitted in printing.

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1937

No. —

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS et al., Petitioners,

vs.

THE NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review an Order of the National Labor Relations Board

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW, AND REQUEST FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—Filed December 6, 1937

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board (hereinafter called the Board) by J. Warren Madden as Chairman and Member of said Board, and Edwin S. Smith and Donald Wakefield Smith, as Members thereof, and, pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C. A., sec. 151 et seq.), files this answer and request for the enforcement of an order of the Board. In filing this answer

and request for enforcement, the Board feels obliged to call the Court's attention to the unduly prolix and argumentative character of the so-called petition for review. It does not conform to the requirements of a pleading, and to the proper practice under the National Labor Relations Act. It is in reality in the nature of a lengthy brief, accompanied by reprints of portions of the record, upon points petitioners will make when the case is subsequently heard before this Court. As a consequence, the Board has found it necessary in answering numerous paragraphs of the petition to refer the Court generally to the actual record of the proceeding before the Board, since any attempt to answer fully the argumentative and incomplete allegations of those paragraphs would require the reproduction in this answer of a considerable part of the entire record before the Board.

1. The Board admits each and every allegation contained in paragraphs "First," "Second," and "Third" of the petition to review.

2. The Board denies each and every allegation contained in paragraph "Fourth" of the petition to review, except that it admits the execution of the contracts therein referred to and for the contents thereof prays reference to copies of the said contracts, being part of the record certified to and filed with this Court herein.

Further answering, the Board avers that said contracts are wholly invalid and contrary to law in that they were not entered into in good faith by the companies aforesaid, composing the consolidated system parties thereto and respondents to the order issued by the Board, but followed upon a course of action on the part of said companies intended to and which in fact did intimidate and coerce their employees into joining the petitioner International Brotherhood of Electrical Workers (hereafter called the Brotherhood) or one or more of its affiliated petitioner unions, and more particularly that said companies immediately following their withdrawal of financial support from certain Employee Representation Plans announced their recognition of the Brotherhood and expressed their preference that their employees join said Brotherhood, despite the fact that at that time they were aware of the meagre membership of their employees in the Brotherhood, despite the fact that at that time they knew that the

members of Local B-752 of the Brotherhood had transferred their allegiance to and had become members of Local 1212 of the United Electrical and Radio Workers of America, despite the opinion expressed by certain representatives of their employees that the sudden recognition of the Brotherhood was a means of coercing them into joining that union, and despite the request on behalf of their employees for a withholding of recognition of the Brotherhood until the employees had an opportunity to discuss the matter. Nevertheless said companies continued in their expressed purpose and, following recognition of the Brotherhood, permitted officers of the various locals thereof, department heads, and foremen to devote full or part time, as required, to campaign for membership therein among and collect dues from said employees during working hours and on the companies' time, drawing their regular salaries from the companies nevertheless. This practice continued up until a short time before the companies entered into the formal contracts with petitioners, and notwithstanding the companies' lack of definite information as to the number of their employees that were members of the petitioner unions, the companies nevertheless executed the aforementioned contracts. It was not until June 29, 1937, after the contracts were executed and the presentation of the Board's case in the proceedings before it had been completed, that the companies received a statement from the Brotherhood of its membership totals, but notwithstanding that this membership statement showed that one of the locals—Local B-829—did not represent a majority of the 13,200 employees eligible for membership therein, the companies nevertheless continued to treat the contract with said Local B-829, as they did all of their contracts with petitioners, as an exclusive collective bargaining agreement in that they would not enter into collective bargaining agreements with any other labor organization during the life of said contracts. Under all of the facts and circumstances the Board was justified in concluding that the companies did and intended to impose the Brotherhood upon their employees to the exclusion of the United Electrical and Radio Workers of America or any other labor organization, and that under all of the facts and circumstances of this case the said contracts were invalid and contrary to law.

3. The Board denies each and every allegation contained in paragraph "Fifth" of the petition to review except that it admits that on June 29, 1937, petitioners presented a membership memorandum to the companies, the same being "Respondent's Exhibit No. 16" of the record certified to and filed with this Court herein.

Further answering, the Board avers that the various provisions of the said contracts are irrelevant and immaterial to the issues before this Court and that the said contracts for the reasons hereinabove set forth are invalid and contrary to law.

4. The Board denies each and every allegation contained in paragraph "Sixth" of the petition to review, except that it admits that on or about May 12, 1937, it issued, through its Regional Director in New York City, its complaint and notice of hearing alleging that the companies aforesaid had engaged and were engaging in certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act, all in accordance with the provisions of Section 10 (b) of the Act, and for a full, complete, and accurate description of the contents of said complaint and notice of hearing and amended notice of hearing the Board prays reference to the originals thereof certified to and filed with this Court herein. The said complaint and notices of hearing were served upon said companies, the Brotherhood, and the said United labor organization.

5. The Board denies each and every allegation contained in paragraphs "Seventh," "Eighth," and "Ninth" of the petition to review except that it admits that in the course of the hearing upon the complaint issued by the Board, the Trial Examiner designated by the Board granted certain motions to amend the said complaint, and for a full, accurate, and complete description of said motions and the amendments so granted and any objections thereto, and other proceedings had before the Board and referred to in the aforementioned paragraphs of the petition to review, the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that in the course of said hearing the Trial Examiner granted a motion by the companies to amend their answer to the said complaint,

and for a full, accurate, and complete description thereof, the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that petitioners were not necessary parties to the proceeding before it, that nevertheless petitioner International Brotherhood of Electrical Workers, of which the other petitioners herein are locals, was served with the complaint and notices of hearing in the proceeding before the Board, that petitioners had actual notice of the proceedings, that their counsel or other representatives attended the hearings therein, and that therefore petitioners were in nowise injured. Any injury of which petitioners complain was due to their failure to take advantage of Section 10 (b) of the National Labor Relations Act and Article II, Section 19 of the Board's Rules and Regulations—Series 1, as amended, by intervening in the proceedings before the Board. Said Section 10 (b) provides as follows:

In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony.

Further answering, the Board avers that if petitioners have been aggrieved by reason of the matters alleged in paragraph "Seventh," "Eighth," or "Ninth" of the petition to review, petitioners have an adequate and complete remedy therefor by application to this Court for leave to adduce additional evidence, under the following express provisions of Section 10 (e) of the National Labor Relations Act:

If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript.

6. The Board denies each and every allegation contained in paragraph "Tenth" of the petition to review, except that it admits that the Board issued its order in said Case

No. C-245 before it, and for a full, complete, and accurate description of the terms of said order the Board prays reference to a copy of the original thereof certified to and filed with this Court herein.

7. The Board denies each and every allegation contained in paragraph "Eleventh" of the petition to review except that it admits that the proceeding had before the Board was not a proceeding under Section 9 of the National Labor Relations Act for the investigation and certification of representatives of the companies' employees for the purposes of collective bargaining. For a full, accurate, and complete description of the contents of the complaint and the amendments duly allowed thereto, the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that the said contracts are, for the reasons hereinbefore set forth, invalid and contrary to law.

8. The Board denies each and every allegation contained in paragraph "Twelfth" of the petition to review, except that it admits that during the course of the proceeding had before the Board the companies made certain motions and objections to the jurisdiction of the Board therein, for a full, complete, and accurate description of which the Board prays reference to the record filed with this Court herein, and except that it further admits that in the course of the hearing had before the Board the said companies offered in evidence as their (Respondents') Exhibits Nos. 1 and 2 the decree and certain related pleadings and proceedings in an action theretofore pending in the United States District Court for the Southern District of New York entitled Consolidated Edison Company of New York, Inc., et al. v. Lamar Hardy et al., and for a full, complete, and accurate description thereof the Board prays reference to said Exhibits Nos. 1 and 2 certified to and filed with this Court herein.

9. The Board denies each and every allegation contained in paragraph "Thirteenth" of the petition to review, and, further answering, avers that the said contracts are, for the reasons hereinbefore set forth, invalid and contrary to law.

10. The Board denies each and every allegation contained in paragraphs "Fourteenth," "Fifteenth," and "Six-

teenth" including sub-paragraphs "A" to "F" inclusive thereof, of the petition to review, except that it admits that the proceeding had before the Board was not a proceeding under Section 9 of the National Labor Relations Act for the investigation and certification of representatives of the companies' employees for purposes of collective bargaining; and further answering alleges that the National Labor Relations Act is valid and constitutional and was validly and constitutionally applied by the Board in rendering its decision, including its findings of fact, conclusions of law, and order in the proceeding to be reviewed herein.

Answering further, the Board avers that the allegations contained in said paragraphs are, for the most part, arguments and conclusions of law not appropriate to a petition for review of an order of the Board and do not require further answer herein.

11. The Board denies each and every allegation contained in paragraph "Seventeenth" of the petition to review.

Wherefore, having duly answered each and every allegation contained in the petition to review, the Board prays the Court that the said petition be denied in so far as it prays that the Board's order be reversed and set aside and that no further proceedings be taken therein and also in so far as it prays that a restraining order be directed to the Board ordering a stay of all proceedings pending determination of the proceedings before this Court.

12. Further answering, the Board, pursuant to the authority conferred upon it by the provisions of the National Labor Relations Act respectfully requests the Court for the enforcement of the order issued by the Board in the proceeding instituted against the companies comprising the said Consolidated Edison Company System, said proceeding being known upon the records of the Board as Case No. C-245, the title thereof being "In the Matter of Consolidated Edison Company of New York, Inc., and affiliated Companies, Brooklyn Edison Co. of New York, Inc., New York and Queens Electric Light and Power Co., Westchester Lighting Co., The Yonkers Electric Light & Power Co., New York Steam Corp., Consolidated Telegraph and Electrical Subway Company and United Electrical & Radio Workers of America, C. I. O. Local No. 1212."

In support of its request for the enforcement of said order the Board alleges:

(1)

The Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company are, and at all times herein mentioned were, operating public utilities corporations organized and existing under the laws of the State of New York with their principal offices and places of business in the City of New York, and they are now, and at all times hereinafter mentioned were, engaged in the business of supplying electric energy to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and a part of the Borough of Queens, within the City of New York. The said Consolidated Edison Company of New York, Inc., is engaged also in the business of supplying gas to consumers situated in the Boroughs of Manhattan and The Bronx, and a part of the Borough of Queens, and in selling to manufacturers and jobbers in New York City for commercial purposes certain by-products incidental to its manufacture of gas. Said Consolidated Edison Company of New York, Inc., in addition to being an operating utility company, as aforesaid, is also a holding company owning controlling stock interests in the other said companies herein, to wit: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electric Subway Company.

The Westchester Lighting Company is and at all times herein mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in Mount Vernon, New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying electricity and gas to consumers situated in Westchester County, New York, except the City of Yonkers.

The Yonkers Electric Light and Power Company is and at all times herein mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in Mount Vernon, New York, and is now and at all times hereinafter mentioned was engaged in the business

of supplying electricity to consumers situated in the City of Yonkers, Westchester County, New York.

The New York Steam Corporation is and at all times hereinafter mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in the City of New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying steam to consumers situated within a part of the Borough of Manhattan.

The Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York, and is now and at all times hereinafter mentioned was engaged in the business of constructing, equipping, maintaining, and operating, under contracts with the City of New York, underground ducts or conduits for the reception of electrical conductors in the Boroughs of Manhattan and The Bronx.

All of the companies aforesaid have for a long period of years been under a unified ownership, management, and operation, and the manufacturing plants, holder-stations, pumping stations, transfer and distribution lines, and all other properties of said companies have been and are operated as a unified and interconnected system.

In the course and conduct of their business the said companies cause and have continuously caused the major portion of the raw materials, supplies, and equipment used in the production of all their electrical energy, gas and steam to be purchased and transported in interstate commerce from and through states of the United States other than the State of New York to their plants and places of business in the State of New York and cause and have continuously caused the electrical energy, gas, and steam produced by them to be sold and supplied to various important businesses engaged in interstate and foreign commerce and vitally dependent upon the use of said electrical energy, gas and steam, including interstate railroads and ferries, telegraph, telephone, newspaper, and radio companies, the New York Stock Exchange, the United States Post Office, and the federal government and the City of New York in connection with navigation in the New York harbor: all of the aforesaid having a close, intimate, and substantial relationship to trade, traffic, communication, transportation, and commerce among the several states and with foreign countries, and to

the operations of instrumentalities engaged therein, and being an integral part of the flow of trade, traffic, communication, transportation, and commerce among the several states and with foreign countries and of the operations of the instrumentalities engaged therein.

(2)

By reason of the provisions of Section 10 (f) of the National Labor Relations Act, this Court has jurisdiction of the petition herein and of this request for enforcement.

(3)

On the 12th day of May 1937 a charge theretofore having been filed with the Board by the United Electrical and Radio Workers of America, a labor organization, the Board, by its Regional Director for the Second Region, duly issued its complaint in said proceeding No. C-245, alleging that the companies aforesaid (respondents before the Board) had engaged in and were engaging in certain unfair labor practices affecting commerce in violation of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act, which complaint, together with a notice of hearing thereon, was duly served upon said companies, the International Brotherhood of Electrical Workers, and the said United Electrical and Radio Workers of America. Thereafter, on May 17, 1937, the companies aforesaid respondents to said complaint, appearing specially, filed a motion to dismiss the complaint for want of jurisdiction together with a request that the motion be heard and determined by the Board prior to hearing on the complaint. This request for a prior and separate hearing on the motion to dismiss the complaint was thereafter denied by the Board. Thereafter, on or about May 25, 1937, the Regional Director issued and duly served an amended notice of hearing upon the companies the Brotherhood, and the United. On June 14, 1937, the companies filed an answer to the complaint reserving their objections to the jurisdiction of the Board. The International Brotherhood of Electrical Workers entered no formal appearance at the hearing but was fully advised of the proceedings and its counsel or other representatives attended upon them.

(4)

On June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, the Board by a Trial Examiner, pursuant to due notice, held a hearing in said proceeding at New York City. At the hearing the respondent companies reserved their objections to the jurisdiction of the Board and noted an exception to the order of the Board denying a prior and separate hearing on their motion to dismiss the complaint. Petitions to intervene filed prior to the hearing by The Independent Gas and Electric Workers Union of Westchester County and by Independent Gas and Electric Union, were denied by the Trial Examiner after argument thereon. At said hearing testimony and other evidence with respect to the allegations stated in said complaint were adduced by the Board and by said respondent companies. On motion by counsel for the Board the complaint was amended without objection to include the name of Stephen L. Solosy in the allegations contained in paragraphs 19, 20, and 21 thereof. On further motion by counsel for the Board, and over respondent companies' objections, the complaint was further amended so as include within paragraphs 23 and 24 references to paragraph 22 thereof, and the said complaint was thereafter further amended to conform to the proof except insofar as the evidence related to the discriminatory discharge of one Philemon Ewing who was not named in the complaint. On motion by counsel for respondent companies the answer was amended to include as a separate defense allegations that certain contracts executed by said respondents with certain local unions of the International Brotherhood of Electrical Workers as of June 15, 1937, had rendered moot any controversy raised by the complaint. At the close of the presentation of the Board's case, respondent companies' motion to dismiss the complaint for lack of jurisdiction was renewed and denied.

(5)

On June 24, 1937, upon the completion of the Board's case, counsel for the respondent companies requested an adjournment to secure the testimony of Floyd L. Carlisle and Harold Dean asserted to be indispensable witnesses. The sole reason offered by said counsel for not calling other witnesses at this time was that the Board had completed the presentation of its case sooner than was anticipated by re-

spondents. The Trial Examiner granted an adjournment until July 6, 1937, for the purpose of receiving the testimony of Carlisle only and reserved until that time decision as to whether the testimony of Dean and other witnesses would be taken when the hearing resumed, with permission to said respondents in the meantime to present the matter of taking testimony of witnesses other than Carlisle directly to the Board. In answer to a request therefor, the Board on July 2, 1937, advised said respondents that it would permit both Carlisle and Dean to testify at the adjourned hearing on July 6, 1937, but would not permit said respondents to adduce testimony from any other witnesses at that adjourned hearing on the ground that such other witnesses should have been produced on June 24, 1937, at the close of the Board's case.

(6)

Thereafter, on September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 37, of the National Labor Relations Board Rules and Regulations—Series 1, as amended.

(7)

Thereafter, on the 10th day of November 1937 the Board, having duly considered the matter, including the record made in the proceeding conducted by the Trial Examiner, the stenographic report of the hearing and the evidence, both oral and documentary, and being sufficiently advised in the premises and being of the opinion upon all the testimony and evidence that said respondent companies had been and then were engaged in certain unfair labor practices affecting commerce, within the meaning of the National Labor Relations Act, duly stated its findings of fact and conclusions of law and entered the following order directed to said respondent companies as follows:

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens

Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property, and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants, and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist

International Brotherhood or Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.

(8)

Said order was duly served upon the companies respondent thereto, the Brotherhood, and the United, and is and has been at all times since its issuance in full force and effect.

Wherefore, the Board prays this Court, pursuant to Section 10 (f) of the National Labor Relations Act, to take jurisdiction of this proceeding and of the questions determined therein and make and enter upon the pleadings, testimony, and evidence, and the proceedings set forth in such transcript, and upon the order of the Board, dated November 10, 1937, a decree enforcing in whole the said order of the Board and requiring the respondents against whom said order is directed, their officers, agents, successors, and assigns to comply herewith.

Dated at Washington, D. C., this 3rd day of December 1937.

J. Warren Madden, Chairman; Edwin S. Smith, Member; Donald Wakefield Smith, Member, National Labor Relations Board. Charles Fahy, General Counsel; Robert B. Watts, Associate General Counsel. (Seal.)

Duly sworn to by J. Warren Madden et al. Jurat omitted in printing.

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ETC., ET AL., Petitioners,

against

NATIONAL LABOR RELATIONS BOARD, Respondent

REPLY BY THE PETITIONERS TO THE BOARD'S ANSWER AND REQUEST FOR THE ENFORCEMENT OF ITS ORDER OF NOVEMBER 10, 1937—Filed January 8, 1938

The above-named petitioners herein file this reply to so much of the Board's answer of December 3, 1937, to the petition for review, dated and filed November 18, 1937, as requests, by cross-petition or otherwise, the enforcement of its Order of November 10, 1937, and hereby reply particularly to Paragraphs "(1)" to "(8)," both inclusive, of such answer.

In so far as the new matter set forth in the Board's answer by way of attempted explanation or defense of the Board's findings and conclusions calls for a reply, the petitioners refer to, and do hereby repeat and reallege, each and every allegation contained in the petition for review, with the same force and effect as if it were fully incorporated herein and made a part of this reply.

Further replying to the Board's request for the enforcement of its Order, as stated at pages 20 to 33 of its answer, the petitioners respectfully show, upon information and belief:

(1)

The petitioners deny the allegations set forth in Paragraph "(1)" of the Board's answer (page 24) that the matters alleged in such paragraph have a close, intimate and substantial relationship to trade, traffic, communication, transportation, and to commerce among the several States and with foreign countries, and to the operations of instrumentalities engaged therein, within the meaning

of the National Labor Relations Act, all within the scope and meaning of Section 8 of Article I of the Constitution of the United States. The petitioners further deny that the matters and things alleged in Paragraph "(1)" of the Board's answer are an integral part of the flow of trade, traffic, communication, transportation and commerce among the several States and with foreign countries and of the operations of the instrumentalities engaged therein.

Replying further to the allegations of Paragraph "(1)" of the Board's answer, the petitioners aver that the facts stipulated and agreed, by and between the Board and the petitioners, as to each of the matters alleged in general terms in Paragraph "(1)" of the Board's answer, are set out in the Stipulation of Facts for the Determination of the Question of Jurisdiction (Board's Exhibit No. 2; Transcript of Record, pages 1318 to 1388); and the petitioners refer thereto as an accurate statement of the facts as to the matters alleged, and hereby incorporate such stipulation and statement herein, and make it a part of this reply. The petitioners particularly aver that the stipulated and agreed facts as to the origins and sources of some of the raw materials used by the petitioners, exclusively within the State of New York, in the production of gas, electricity and steam, for local consumption in such State, are as broad as, or are sufficient to sustain, the allegations as to such matters, in Paragraph "(1)" of the Board's answer.

The petitioners further aver that the grounds on which, according to Paragraph "(1)" of the Board's answer, the Board now attempts to sustain and enforce its jurisdiction over the petitioners, are substantially different from those alleged in the complaint on which the Board asserted and exercised jurisdiction, and that the principal grounds on which jurisdiction was first asserted and exercised, are now abandoned as contrary to the stipulated facts.

(2)

The petitioners aver that the allegations contained in Paragraph "(2)" of the Board's answer state only a conclusion of law to be determined by this Court, and as such call for neither an admission nor a denial by petitioners, who are advised and believe that the Board was and is without jurisdiction in the premises.

(3)

As to Paragraph "(3)" of the Board's answer, the petitioners deny that the complaint was duly issued by the Board; deny that the complaint and notice of hearing thereon were duly served upon them; deny, for lack of knowledge, that the said complaint and notice of hearing were served, and that the amended notice for a hearing was served, upon any person other than the petitioners, as alleged in Paragraph "(3)" of the Board's answer.

(4)

The petitioners deny that the hearing held by the Trial Examiner, as set forth in Paragraph "(4)" of the Board's answer, was pursuant to due notice. The petitioners further aver that the further amendment granted at the close of the Board's case, to conform the complaint to the proof, was made without due notice to the petitioners and over their objections, and that petitioners' motion to amend their answer so as to plead an additional defense as set forth in Paragraph "(4)" of the Board's answer was made in view of the improper allowance of amendments of the Board's answer without due notice to the parties and persons interested, and was granted without objection by the Board.

(5)

The petitioners deny each and every allegation contained in Paragraph "(5)" of the Board's answer, except that they admit and further aver that the case in behalf of the Board was completed unexpectedly on June 24th, aside from a few minor matters; that recess was taken until July 6, 1937, because of the absence of Mr. Floyd L. Carlisle, who was in Europe; that decision was then reserved as to whether the testimony of Mr. Harold C. Dean (who was in Milwaukee, Wisconsin, in attendance at a meeting of the American Institute of Electrical Engineers) and of other witnesses for the petitioners, would be received on the adjourned date; that leave was granted to petitioners' counsel to present the matter to the Board by letter; and that this was done (Transcript of Record, pages 1463 to 1467). The petitioners further allege that at no time on June 24, 1937, was it directed or suggested, by or in behalf of the Board, that any testimony in behalf of the petitioners other

than that of Messrs. Carlisle and Dean would have to be presented on June 24th or on any intervening day before July 6th, the Board's testimony having been rested only on June 24th, and then unexpectedly. No date was set by the Board for any intermediate hearing before July 6th. The Board on July 2nd denied the petitioners' request to present testimony other than that of Messrs. Carlisle and Dean.

The petitioners further aver that on July 6, 1937, the case for the Board was completed and a motion was made by the Board to further amend its complaint by conforming the complaint to the evidence, and was granted, over the petitioners' objections. The petitioners renewed their motions to dismiss for want of jurisdiction and upon other grounds, and thereupon called upon Messrs. Carlisle and Dean, who testified in their behalf. Under direction of the Board, the Trial Examiner declined, on July 6th, to permit the calling of other witnesses who were present in the hearing room and ready to testify. An offer of proof on behalf of the petitioners was made and spread upon the record. Thereupon a motion for adjournment was made to enable petitioners to call other witnesses to meet the issues raised by the granting of the broad and vague motion by which the complaint had been further amended on that day. This motion was denied by the Trial Examiner on the ground that he was bound by the direction of the Board, made prior to the granting of the latest amendment of the complaint. Counsel for the petitioners duly excepted to the refusal to permit the testimony of the witnesses present to be received on material issues. The Trial Examiner for the Board also did not accept and act upon a suggestion by counsel for the petitioners (Transcript of Record, page 1312) that the testimony of the witnesses present be taken provisionally and without prejudice, so that the Board would have the testimony and might consider the same if it saw fit. The case was thus hurriedly closed by the Board, over petitioners' objections, without having received, and without having given to the petitioners a reasonable opportunity to present, vital and necessary testimony upon important issues, including testimony which was in part necessitated by the repeated amendments of the complaint during the hearings.

(6)

The petitioners admit the allegations contained in Paragraph "(6)" of the Board's answer, that the proceeding was transferred to the Board on September 29, 1937, but deny that such transfer at such time was in accordance with the requirements of fair hearing and due process of law, and further deny that the proceeding, after such transfer, was continued by and before the Board in accordance with the Board's rules and regulations. The petitioners refer to the allegations contained in Paragraphs "48" to "51" both inclusive, of the petition for review for a statement of the facts showing non-compliance by the Board with its own Rules and Regulations.

The petitioners further aver that although the hearing before the Trial Examiner of the Board had been hurried and closed, at the Board's directions, as though great haste was warranted and necessary, the Order for the transfer of the case to the Board was not made until nearly three months afterwards and that the case was not decided by the Board until more than four months after it had been so summarily expedited and closed.

The petitioners further aver that by virtue of the procedure arbitrarily adopted by the Board and alleged in Paragraph "(6)" of the Board's answer, there were no report and findings of fact by the Trial Examiner, who alone had seen the witnesses and heard their testimony, no findings of fact by anyone who had seen any of the witnesses or heard any of the testimony, and no opportunity accorded to the petitioners for a hearing, argument, or the presentation of briefs on the facts or the law, before any member of the Board or before anyone who was to make its findings, decision and Order. The petitioners aver that such procedure was wholly contrary to the requirements of fair hearing and determination according to due process of law, and so was in violation of the constitutional rights of the petitioners.

(7)

The petitioners deny, for want of knowledge, each and every allegation contained in Paragraph "(7)" of the Board's answer, except that they admit that the Order purported to be entered on November 10, 1937, contains the

provisions set forth in the Board's answer, all of which are alleged by the petitioners to be of no force or effect because the Board had no jurisdiction to make them and because the Board made them in a manner wholly contrary to law and to constitutional right.

(8)

The petitioners deny that the service of the Order of the Board dated November 10, 1937, was duly made upon them as alleged in Paragraph "(8)" of the Board's answer. The petitioners deny knowledge as to whether or not the Order, as well as prior papers, notices, complaint, and amendments of the complaint, were duly served upon anyone other than the petitioners. The petitioners further aver that the Board, in its opposition to the petitioners' application for a temporary stay of the Board's Order, alleged and contended that its Order was not and could not at any time be, in full force and effect, or of any force or effect, until after final review followed by an enforcing decree of this Court.

(9)

The petitioners, further replying to the Board's request for the enforcement of its Order, aver that the Board's cross-petition requesting the enforcement of its Order fails to allege facts sufficient to have authorized the Board to make and enter the Order under review and fails to allege facts sufficient to entitle the Board to seek enforcement of its Order in this proceeding. The petitioners particularly allege that the cross-petition of the Board fails to state facts sufficient to show that the Board ever acquired or had any lawful jurisdiction over any of the petitioners, or facts sufficient to show that the Board ever duly served and acquired jurisdiction over other necessary and indispensable parties to such a determination as the Board undertook to make and now asks this Court to enforce.

(10)

The petitioners allege that, after hurrying the hearings before the Trial Examiner and requiring him to close the case on July 6th without hearing witnesses for the petitioners who were present in the hearing-room, the Board waited nearly three months and until September 29, 1937, before

taking any further action in the case, with no report or findings by the Trial Examiner meanwhile. On the date last named, the Board ordered the case transferred to and continued before itself. On November 10, 1937, without further proceedings and more than four months after the summary closing of the hearings, the Board made its Order here under review. On November 18, 1937, the petition for review was docketed, and the Senior Circuit Judge by Order directed that the Board "forthwith certify to this Court, pursuant to Section 10(f) of the National Labor Relations Act, a transcript of the entire record in the proceedings, including therein the Trial Examiner's Report and findings upon the facts if any such Report there was, together with all exhibits and the originals of all papers filed with the said Board, from which the complaint was formulated and issued." On November 30, 1937, the certified Transcript was filed by the Board with the Clerk of this Court. On December 6, 1937, counsel for the petitioners asked this Court for the hearing of their petition for review during December and expeditiously, as required by Section 10(f) of the Act. General Counsel for the Board opposed the fixing of a December date. On December 11, 1937, General Counsel to the Board made written application to the Court for the fixing of a date during the week of January 10, 1938, for the hearing of the petition for review. Counsel for the petitioners opposed this application, and asked for a hearing in December. This Court fixed January 11, 1938. On December 29, 1937, counsel for the Board made oral application to the Senior Circuit Judge for a further postponement, which was granted to January 17, 1938.

Section 10(i) of the National Labor Relations Act requires that

"Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed."

The petitioners allege that, by reason of the facts hereinabove stated, the matters and things alleged in the complaint of May 5, 1937, and set forth in the Board's decision, findings and Order of November 10, 1937, have become and are stale and moot, and that by reason of its own wilful delay, laches, and non-compliance with the statute, the Board is not entitled to the enforcement of its Order against the petitioners.

(11)

The petitioners respectfully ask that the Board's cross-petition and request for the enforcement of its Order dated November 10, 1937, be denied, upon each and all of the grounds stated in the petition for review verified and filed by the petitioners on November 18, 1937, and upon the grounds hereinabove set out.

Wherefore, the petitioners ask that the Board's request for the enforcement of its Order of November 10, 1937, be dismissed, and that the relief prayed for in their petition for review be granted, and that the petitioners have such other and further relief as may be just and proper in the premises.

Dated, January 7, 1938.

Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, by Ralph H. Tapscott, President; Consolidated Edison Company of New York, Inc., Whitman, Ransom, Coulson & Goetz, Attorneys for the Petitioners, No. 40 Wall Street, New York City. William L. Ransom, Pincus M. Berkson, Of Counsel.

Duly sworn to by Ralph H. Tapscott. Jurat omitted in printing.

[File endorsement omitted.]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; International Brotherhood of Electrical Workers, Local Union No. B-825, et al., Petitioners,

vs.

THE NATIONAL LABOR RELATIONS BOARD, Respondent

REPLY BY THE PETITIONERS TO THE BOARD'S REQUEST FOR THE ENFORCEMENT OF ITS ORDER OF NOVEMBER 10, 1937—Filed January 13, 1938

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The above named Petitioners for Reply to the Board's Request, dated December 3, 1937, for enforcement of its Order of November 10, 1937, adopt as and for their Reply to said Request the verified Reply, dated January 7, 1938, of the Consolidated Edison Company of New York, Inc., and its Affiliated Companies, to the Board's Request for enforcement of the said Order, and respectfully pray that said Reply of said Companies may be taken as the Reply, above stated, of these Petitioners.

The Petitioners respectfully ask that the Board's Request for the enforcement of the said Order be denied, upon each and all of the grounds stated in the petition for review verified and filed by these Petitioners on November 18, 1937, and upon the grounds set forth in the Reply of these Petitioners above referred to.

Wherefore, these Petitioners respectfully ask that the Board's Request for the enforcement of the said Order be dismissed and that the relief prayed for in their petition for review be granted, and that these Petitioners have such other and further relief as may be just and proper in the premises.

And as in duty, etc.

Dated, January 13, 1938.

Isaac Lobe Straus, Munsey Building, Baltimore, Md., Claude A. Hope and Delafield, Thorne & Marsh, 20 Exchange Place, New York, N. Y., Solicitors for Petitioners.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ETC., ET AL., Petitioners,

against

NATIONAL LABOR RELATIONS BOARD, Respondent

PETITION FOR LEAVE TO INTERVENE

Louis B. Boudin, being duly sworn, deposes and says:

I am the attorney for United Electrical and Radio Workers of America, the labor union on whose complaint the proceeding sought to be reviewed herein was initiated by the National Labor Relations Board.

I have participated as counsel in the hearings conducted by the National Labor Relations Board, and also collaborated in the brief filed by its counsel in support of the complaint, which resulted in the order of the Board sought to be reviewed in this Court.

While the nominal parties to this proceeding are the National Labor Relations Board and the Companies who filed the petition for review, the real party in interest is not the National Labor Relations Board, which is merely a public functionary with no interest one way or the other, but the Union which I represent,—the dispute being between the Union which I represent and the Petitioners in this proceeding.

I therefore respectfully pray that my client, United Electrical and Radio Workers of America, be permitted to intervene in this proceeding, and that I be permitted to argue and file a brief on its behalf, both on the motion for a stay, as well as on the final argument of this case on the merits.

Louis B. Boudin.

Sworn to before me, this 8th day of December, 1937.
Sara M. Linsky, Notary Public, Kings County.
Kings Co. Clk. No. 67, Reg. 8877. N. Y. Co. Clk. No. 130. Commission expires March 30, 1938.

[Endorsed:] Motion granted. Manton, U. S. J. Dec. 8/37.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ETC., ET AL., Petitioners,

against

NATIONAL LABOR RELATIONS BOARD, Respondent

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL., Petitioners

against

NATIONAL LABOR RELATIONS BOARD, Respondent

STIPULATION RE CONSOLIDATION

It is Hereby Stipulated and Agreed, by and between the undersigned that the above entitled cases be consolidated under the above title and heard as one case on the Calendar of this Court, without denial of the right of counsel for each of the respective petitioners to offer oral argument and submit briefs to the Court; and it is further

Stipulated and Agreed, that the record certified to this Court by the National Labor Relations Board, pursuant to the order of United States Circuit Judge Martin T. Manton, issued and entered the 19th day of November, 1937, in proceeding entitled "In the Matter of Consolidated Edison Company of New York, Inc., and Its Affiliated Companies, etc., Petitioners, against National Labor Relations Board, Respondent" be and the same hereby is accepted as and declared to be the only record required to be certified, printed and filed in the cases as consolidated pursuant to this stipulation and any order that may be entered hereon; and it is further

Stipulated and Agreed, that an order of consolidation providing for the printing and filing of one record herein

may be entered by the Court without notice to the undersigned.

Dated, New York, N. Y., December 7th, 1937.

Charles Fahy, General Counsel, National Labor Relations Board. Whitman, Ransom, Coulson & Goetz, Solicitors for Consolidated Edison Company of New York, Inc., et al., Petitioners. Isaac Lobe Straus and Claude A. Hope and Delafield Thorne & Marsh, Solicitors for International Brotherhood of Electrical Workers, et al., Petitioners.

So Ordered. Manton, U. S. C. J. Dec. 14/37.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—Filed December 15, 1937

A motion having been made herein by counsel for the United Electrical and Radio Workers of America for leave to intervene, and argue and file a brief on its behalf, both on the motion for a stay and on the argument on the merits;

Upon consideration thereof it is

Ordered that said motion be and hereby is granted.

Wm. Parkin, Clerk.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

Before Manton, Swan and Augustus N. Hand, Circuit Judges

Petitions by the Consilidated Edison Company of New York and others for review of an order of the National

Labor Relations Board. The respondent's answers pray for enforcement of said order.

Whitman, Ransom, Coulson & Goetz, for Consolidated Edison Company, et al., Petitioners; William L. Ransom, Wesley A. Sturges and Pincus M. Berkson, of Counsel.

Isaac Lobe Straus, Claude A. Hope and Delafield, Thorne & Marsh, for International Brotherhood of Electrical Workers, et al., Petitioners.

Charles Fahy, General Counsel, Robert B. Watts, Associate General Counsel, Laurence A. Knapp, Samuel Edes, and H. Gardiner Ingraham, Attorneys, for Respondent.

Louis B. Boudin, for United Electrical and Radio Workers of America, C. I. O. Intervenor.

James J. O'Brien filed a brief as Amicus Curiæ.

OPINION

SWAN, Circuit Judge:

In May 1937, United Electrical and Radio Workers of America, Local 1212, a labor organization which we shall call United, filed with the National Labor Relations Board a charge that Consolidated Edison Company of New York and its affiliated companies (together refetred to as petitioners) were engaging in unfair labor practices. On May 12th the Board issued its complaint against the petitioners. Appearing specially, they challenged the Board's jurisdiction, and moved that the jurisdictional question be decided prior to hearings on the merits. This request was denied. The petitioners then answered, reserving their jurisdictional objections, and hearings were had before a Trial Examiner designated by the Board. Before the Trial Examiner had made findings of fact or filed a report, the case was transferred to the Board. On November 10, 1937, the Board issued a cease and desist order based on its finding of violations of sections 8(1) and (3) of the National Labor Relations Act (29 USCA sec. 158). Pursuant to section 10(f), 29 USCA sec. 160(f), the petitioners brought the order to this court for review. A similar petition for review was also filed by the International Brotherhood of Electrical Workers and numerous local unions (together referred to as the Brotherhood). The Brotherhood is affiliated with the American Federation of Labor, while United is connected with the Committee for Industrial

Organization. The Brotherhood had not intervened before the Board but regards itself as a "person aggrieved" by provisions of the order which affect it. In its answers to the petitions the Board prays for enforcement of its said order. United has appeared as an intervenor in support of the Board's order.

The first question to be considered is that of the Board's jurisdiction. Section 10(a) of the Act, 29 USCA sec. 160(a), empowers the Board "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." The terms "commerce" and "affecting commerce" are defined in section 2(6) and (7), 29 USCA sec. 152. It is not contended that the petitioners are themselves engaged in commerce as so defined. They are local public utility corporations and their production and distribution of electricity, gas and steam are carried on solely within the City of New York and adjacent Westchester County. The contention of federal jurisdiction over the labor relations of such employers is rested upon the argument that an interruption of their business by an industrial labor dispute would vitally affect commerce, because (1) in producing electric energy, gas and steam they use large quantities of raw materials originating outside the State of New York, and (2) some of their customers are engaged in interstate or foreign commerce or are instrumentalities of such commerce.

The facts are not in dispute; they were stipulated in great detail. A brief summary will suffice for present purposes. Consolidated Edison Company of New York is both an operating and a holding company; it owns between 90 and 100 per cent. of the voting stock of each of six affiliates, its co-petitioners. The parent corporation and each of its subsidiaries, with one exception, is a public utility company within the meaning of the Public Service Law of New York and is subject to regulation by the state commission. The one exception is Consolidated Telegraph and Electrical Subway Company, which maintains and leases to others of the petitioners space in sub-surface ducts. The petitioners' labor relations are also subject to state regulation under a recent statute (Ch. 443, Laws of 1937), unless jurisdiction of the state labor relations board must yield to that of the National Board. The petitioners are operated as a unitary system. A few figures will indicate the magni-

tude of the system's business. In 1936 it supplied 97.5 per cent. of all electric energy sold in New York City, and practically 100 per cent. of that sold in Westchester County; it supplied 55.3 per cent. of the total gas sold in New York City and is the only utility supplying gas in Westchester County. It is the only central-station steam utility in New York City. Its employees number more than 40,000 and its total payroll in 1936, including annuities and separation allowances, was nearly $82,000,000. It used almost 5,000,000 tons of coal and more than 114,000,000 gallons of oil in the year 1936. All of the oil and all but an insignificant portion of the coal moved to the petitioners' plants from states other than New York. The out-of-state purchases are made from independent dealers and are delivered by independent carriers. Although the bulk of the petitioners' business, in respect to both the quantity of service and the number of consumers, is supplying electricity and gas for residential and local commercial uses, they also have numerous consumers who are engaged in interstate or foreign commerce. The most striking illustrations of this class of consumers are the railroads. Thus, electric energy supplied to the New York Central, the New York, New Haven and Hartford, and the Hudson and Manhattan is used for the lighting and operation of their passenger and freight terminals and for the movement of interstate trains; and steam supplied to the Pennsylvania Railroad Company is used to operate switches in its tunnel under the Hudson River.

The construction and validity of the National Labor Relations Act was extensively discussed in Labor Board v. Jones & Laughlin, 301 U.S. 1. As the Chief Justice there pointed out, the Act does not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to obstruct or burden such commerce. At page 37 the opinion states:

"Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. Schechter Corp. v. United States, supra. Undoubtedly the scope of this power must

be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. Id. The question is necessarily one of degree."

Consistently with these principles it can scarcely be doubted that the labor disputes of a local merchant will not normally fall within the Board's jurisdiction, even though some part of his stock in trade originates outside the state or some of his local customers are engaged in interstate commerce. In such a case the closing of the merchant's store by a strike of his employees would undoubtedly affect interstate commerce, but the effects would be too remote and indirect to bring his activities within the range of federal regulation. We need not say whether the same conclusion would follow if the merchant's importations from without the state ran into figures comparable to the petitioners importations of coal and oil. Nor need we decide whether their importations of raw materials are alone enough to bring them under the Board's jurisdiction. It is the use which some of their customers make of the electric energy and steam purchased from the petitioners, that furnishes the Board its main ground for claiming jurisdiction. The petitioners argue that they should not be chargeable for the independent acts of customers whom, by state law, they are compelled to serve. But the problem is not to be approached from the standpoint of vicarious liability. It is to be approached as a question of fact, namely, what will be the result upon commerce of a labor dispute between the petitioners and their employees. Should such a dispute result in interrupting the petitioners' service, the effects upon commerce would be catastrophic. We mention only some of them. Instantly the terminals and trains of three great interstate railroads would cease to operate; interstate communication by telegraph, telephone and radio would stop; lights maintained as aids to navigation would go out, and the business of interstate ferries and of foreign steamships, whose docks are lighted and operated by electric energy, would be greatly impeded. Such effects we cannot regard as indirect and remote.

It is true that the local consequences of a cessation of the petitioners' services would be equally, if not more, disastrous. It is argued that considerations of the health, safety and convenience of the millions of people who live and work in New York City outweigh the national interest in protecting interstate commerce from disruption; that local public utilities have always been regarded as exclusively within the jurisdiction of the states, and that to extend the federal jurisdiction to include them is to obliterate pro tant our dual system of government, contrary to the admonition of the Chief Justice in the Jones & Laughlin case. We are not unmindful of the persuasive force of these arguments. Nevertheless, we cannot doubt the power of Congress to legislate with respect to local utilities the disruption of whose service would have a direct effect upon interstate commerce; cf. Appalachian Elec. Power Co. v. National Labor Rel. Board, 93 F. (2d) 985 (C. C. A. 4); nor can we doubt that the Act under consideration was intended to exert federal power under the commerce clause to the full extent of constitutional limits. This is not to say that all utilities are within the Act. "The question is necessarily one of degree." In the case at bar the effect of disrupting service would be of such magnitude and so immediate, that we think the petitioners are within the Board's jurisdiction, even though only a small percentage of their total business is used in interstate or foreign commerce.

None of the Labor Board cases decided by the Supreme Court has presented a situation like that at bar. In three of them the Board's order ran against an employer whose business, though local in respect to manufacturing, was plainly interstate in respect to sales of a very large percentage of its manufactured product. Labor Board v. Jones & Laughlin, 301 U. S. 1; Labor Board v. Fruehauf Co., 301 U. S. 49; Labor Board v. Clothing Co., 301 U. S. 58. In one case the employer was engaged in a business of interstate communication (Associated Press v. Labor Board, 301 U. S. 103); in others the business was interstate transportation of passengers. Washington Coach Co. v. Labor Board, 301 U. S. 142; Labor Board v. Pennsylvania Greyhound Lines, 302 U. S. —; Labor Board v. Pacific Greyhound Lines, 302 U. S. —. We recognize that these cases are not decisive of the case at bar, but we think

that the principles they have announced point to the conclusion we have reached.

The petitioners contend that the Board denied them a full and fair hearing according to due process of law. This complaint is based upon four grounds. The first relates to the Board's direction that the proceeding be transferred to it pursuant to Rule 37. The result was that the Trial Examiner made no intermediate report, as contemplated by Rule 32, and the petitioners had no opportunity to file exceptions to his report as contemplated by Rule 34. Nor were they accorded oral argument before the Board, although it must be presumed that their brief submitted to the Trial Examiner came to the Board's attention. This procedure is not one likely to inspire confidence in the impartiality of the proceedings. It results in the findings of fact being made by persons who did not see the witnesses—a matter which may have far reaching consequences in view of the very limited power conferred upon the courts to review the Board's findings of fact. But, though we do not commend such procedure, we cannot say that it has deprived the petitioners of due process of law. It is familiar practice for a court to decide issues on testimony wholly taken by deposition; and section 10(c) of the Act places upon the Board the duty of stating its findings of fact "upon all the testimony taken." Nor do we think the Board is bound to hear oral argument if it prefers to take a brief. Morgan v. United States, 298 U. S. 468, presented a very different situation.

The second ground of complaint is that the Trial Examiner permitted amendments, thereby introducing issues which necessitated the presence of an absent party, namely, the Brotherhood. As will appear from subsequent discussion, we do not regard the Brotherhood as a necessary party.

The third ground relates to the Examiner's refusal to accept testimony relating to the petitioners' reasons for discharging an employee named Solosy. This will also be discussed later.

Finally, complaint is made that remote hearsay dominated the testimony. This court has already ruled that hearsay is admissible in hearings before the Board. Remington-Rand v. Labor Board, February 14, 1938 (C. C. A. 2). Whether some of the hearsay was too remote to be entitled

to credence, goes to the correctness of the Board's findings rather than to the constitutional validity of its proceedings. For the foregoing reasons the petitioners' contention that they have been denied due process of law is overruled.

We pass now to the merits of the controversy. The Board's findings of fact, conclusions of law and order are too voluminous to be incorporated in this opinion. The complaint, as amended, charged the petitioners with the following unfair labor practices: (1) the use of undercover operatives to spy upon union activities of employees, in violation of section 8(1); (2) the discriminatory discharge because of union activities of six employees, in violation of section 8(3); and (3) coercion of their employees in their right to form labor organizations of their own choosing in violation of section 8(1) and (2). The Board sustained the charges based on sections (1) and (3) but dismissed the charge based on section 8(2).

The most important of the charges is the one referring to coercing the employees into joining the Brotherhood. In the latter part of 1933 and the early part of 1934 the petitioners sponsored and assisted in the formation of certain Employee Representation Plans among their employees. They were company-dominated unions. Immediately after the validity of the National Labor Act was sustained by the Supreme Court, Carlisle, who was in charge of the petitioners' labor policy, conferred with Tracy, the international president of the Brotherhood, and on April 16, 1937, Tracy wrote him a letter demanding recognition of the Brotherhood as the representative of its members, and sending a proposed contract. On April 20, Carlisle called a meeting of the chairmen of all the general councils of the Plans and announced that the management could no longer continue financial support to the Plans, but had decided to recognize the Brotherhood. He said that the employees were expected to join the Brotherhood and he referred to it as the "sole bargaining body" for employees of Consolidated Edison Company. On the same date Carlisle replied to Tracy's letter, agreeing to recognize the Brotherhood and to negotiate contracts with it, although at this time the number of its members among the petitioners' employees was insignificant. Shortly thereafter there were set up seven Brotherhood locals, most of the officers of the Plans becoming officers of the locals. During the same period United was endeavoring to gain members among the petitioners' em-

ployees. An officer of United wrote Carlisle for a conference, but no answer was made to this letter. Without specifying further details it will suffice to say that there was ample evidence to support the Board's finding that the petitioners exerted pressure on their employees to join the Brotherhood, while they discouraged membership in United. Between May 28 and June 16, they entered into substantially similar contracts with the seven locals of the Brotherhood. The contracts were introduced by the petitioners in support of a contention that the issue of coercion of employees was thereby rendered moot. The contracts in terms recognized the Brotherhood as the representative of its members and were applicable only to such members. As of June 29, 1937, their membership was 30,000 out of 38,000 eligible employees. Paragraph 1(f) of the order under review directs the petitioners to cease and desist from "giving effect to their contracts with" the Brotherhood. Strenuous objection to this provision of the order is made both by the petitioners and by the Brotherhood.

They both urge that the Brotherhood was a necessary party to the proceeding if the Board's order is to invalidate these contracts. This contention has been authoritatively determined against them by the recent decision of the Supreme Court. National Board v. Pennsylvania Greyhound Lines, 302 U. S. — (announced Feb. 28, 1938). The order does not run against the Brotherhood. Its presence was not necessary to enable the Board to determine whether the Act had been violated or to make an appropriate order against the petitioners.

It is not so clear, however, that invalidating the contracts is an appropriate order against the petitioners. Unlike the Greyhound case, the Board has here dismissed the charge under section 8(2) which forbids an employer "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." Since the Brotherhood is not dominated, supported or interfered with by the petitioners, it is not immediately obvious that the employees' right to self-organization will be injured by allowing the contracts to be carried out. Under them, the Brotherhood acts only for its own members, and clause 1(g) of the order restrains the petitioners from recognizing it as the exclusive representative of their employees. Other subdivisions, namely 1(a), (b),

(c), (d), (e) and (h), restrain them from urging their employees to join any labor organization, or interfering with their free exercise of self-organization, or favoring the Brotherhood or any other labor organization. Under these provisions the employees will have complete freedom to join United in preference to the Brotherhood, or to join neither. But the Board concluded that "in order to establish conditions for the exercise of an unfettered choice of representatives" by the petitioners' employees, the petitioners should be ordered to cease and desist from giving effect to the contracts. We do not think that this conclusion is so unwarranted as to necessitate deleting clause (f) from the order. However, since the Board has found no reason for "disestablishing" the Brotherhood, as was done in the Greyhound case, it would seem to be entirely lawful for the petitioners and the Brotherhood to make new contracts on behalf of its own members, once the employees have been notified that the old contracts are not binding and that they are free to join or refrain from joining any labor organization; and the new contracts may be on the same terms as the old. We see nothing in the order to prevent that.

The Board has found that the petitioners discharged six employees because of their union activities contrary to section 8(3) of the Act. Three of the men were discharged November 29, 1935, and two on June 19, 1936. All five were officers or active leaders of Local 103 of the Brotherhood of Utility Employees, which later became affiliated with United. The petitioners presented testimony that these men were discharged because it was necessary to reduce the size of two departments in which they worked; that in making such reductions preference was given to married employees; and that these men were single and were treated no differently than others, both union and non-union, who were laid off about at the same time. The Board rejected this explanation chiefly, it would seem, because other single men with less seniority of service were retained. The question is not whether this court would have reached the same conclusion as the Board, but whether there is evidence to support the Board's findings. Section 10(d). We cannot say that the record is wholly barren of evidence to support the charge that they were discriminated against on account of union activities. Hence the order requiring that they be reinstated and made whole for losses sustained by reason of their dis-

charges must stand. This does not mean that the petitioners must employ these five men in addition to their present employees, if the work to be done does not require additions to their force, for the petitioners are at liberty to discharge an equal number of other employees for proper reasons.

The sixth discharge complained of is that of Solosy, who was laid off January 17, 1936. The reason given him was the shutting down of the "A" plant of the Astoria Light, Heat & Power Company. It was in fact shut down. Other employees in his division, of less seniority, were retained. In his case, also, the Board found that in reality his discharge was because of his union activity. Solosy's case differs from the others in that the petitioners were not allowed to introduce certain evidence as to the circumstances surrounding his discharge. This situation arose as follows: The Board unexpectedly completed its proof on June 24, 1937. Counsel for the petitioners was unready to go on and obtained a continuance in order that Messrs. Carlisle and Dean, who were absent from the city, might testify on July 6th. The Examiner and the Board (by letter) declined to let any other witnesses testify on that date. Counsel offered two of Solosy's supervisors to testify to the reasons for his discharge and to the fact that the men who were retained in preference to him were better educated and better trained. These witnesses were at hand, their testimony would have been short and would have entailed no appreciable delay in closing the hearings. It was vital testimony on the issue of the petitioners' motive in discharging him. Denial of leave to introduce it appears to us unreasonable and arbitrary. However, the petitioners have not applied to this court for the taking of additional evidence, as they might under section 10(e).

An order of this court may be entered for enforcement of the Board's order.

In United States Circuit Court of Appeals, Second Circuit

Consolidated Edison Company of New York, Inc., et al., Petitioners,

vs.

National Labor Relations Board, Respondent

Judgment—Filed March 21, 1938

Petitions by the Consolidated Edison Company of New *New* York, et al., for review of an order of the above named respondent, and a prayer by said respondent for enforcement of said order having come on to be heard,

Upon consideration thereof it is

Ordered that the prayer of said respondent for the enforcement of the Board's order be and the same is hereby granted.

Wm. Parkin, Clerk.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

Supreme Court of the United States—October Term, 1938

No. 19

Order Allowing Certiorari—Filed May 16, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States—October Term, 1938

No. 25

Order Allowing Certiorari—Filed May 16, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in

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No. [redacted] 19

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IN THE

Supreme Court of the United States

OCTOBER TERM—1937

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, BROOKLYN EDISON COMPANY, INC., NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY

Petitioners

against

NATIONAL LABOR RELATIONS BOARD

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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March 31, 1938

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No.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., *et al.*,
Petitioners

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NATIONAL LABOR RELATIONS BOARD

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UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners Consolidated Edison Company of New York, Inc., and its affiliated Companies pray that a writ of certiorari issue to review the decision of the Circuit Court of Appeals, Second Circuit, rendered March 14, 1938 (R. 1737-1747), and the Order entered by that Court on March 21, 1938 (R. 1748), denying the application of the petitioners (R. 1473-1536) that an Order made by the National Labor Relations Board on November 10, 1937 (R. 127-130), be reviewed and set aside or modified, and granting the

request of the Board (R. 1703-1711) for the enforcement of its Order asserting its jurisdiction over the petitioners as to their labor relations and requiring the petitioners to do and desist from doing various acts and things.

The Opinion of the Circuit Court of Appeals has not been reported and is at R. 1738.

A. Summary Statement of the Matters Involved

The Board having made an Order as to the petitioners (Appendix "A" hereto), the petitioners asked the Court below, pursuant to Section 10(f) of the National Labor Relations Act (hereinafter referred to as "the Act"), to review and to set aside or modify the Board's Order. By cross-petition (R. 1703-1711), the Board requested the enforcement of its Order.

As a "person aggrieved" by the Board's Order, the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor (hereinafter referred to as the "Brotherhood") also filed a petition for review (R. 1554-1581), under Section 10(f) of the Act, as to such parts of the Order as affected the Brotherhood. The United Electrical and Radio Workers of America affiliated with the Committee for Industrial Organization (hereinafter referred to as "United") had filed the charge (R. 4-6) upon which the complaint of the Board was based (R. 7-16), and in the Court below was admitted as an intervenor, upon its application (R. 1737). The Order of the Court below granted enforcement of the Board's Order (R. 1748).

The petitioners carry on their business wholly within the City of New York and the adjacent County of West-

chester (R. 72-73). Gas, electricity and steam generated by them are delivered to customers only within the State of New York (R. 1361). They buy no gas or steam; such electricity as they buy is generated and purchased within the State of New York (R. 1360).

The Court below found, as did the Board, that each of the petitioners, with one exception, is a "public utility company" as defined in the Public Service Law of the State of New York and, as such, is subject to the plenary jurisdiction of the Public Service Commission of the State of New York (R. 1374, 1739). The one exception is Consolidated Telegraph and Electrical Subway Company, which maintains and leases space in subsurface ducts within the City of New York under the authority of contracts which it has with the City of New York (R. 1739). Excepting the Subway Company, none of the petitioners is engaged in any business other than that of a local public utility company (R. 1739).

Each of the petitioners is likewise subject to the New York State Labor Relations Act (Ch. 443, Laws of 1937) and to the jurisdiction of the State Board thereby created, "unless", as the Court below pointed out, "jurisdiction of the State Labor Relations Board must yield to that of the National Board" (R. 1739).

The Court below found that the petitioners "are local public utility corporations and their production and distribution of electricity, gas and steam are carried on solely within the City of New York and adjacent Westchester County" (R. 1739). They neither own, operate nor control, directly or indirectly, any item of plant or equipment, or carry on any operation or part of their business, outside the State of New York (R. 1339). They sell and deliver

their service to retail consumers, or to "wholesale" customers, such as apartment house owners or office building owners, who buy from the petitioners and sub-meter the service to their tenants, all within their local territory (R. 72-73, 1373).

The opinion below stated the petitioners' purchases of raw materials for the year 1936, consisting of 5,000,000 tons of coal and more than 114,000,000 gallons of oil. The Court found that "All of the oil and all but an insignificant portion of the coal moved to the petitioners' plants from States other than New York. The out-of-state purchases are made from independent dealers and are delivered by independent carriers" (R. 1740).

Of the petitioners' 2,324,800 electric consumers (all within the City of New York and adjacent Westchester County) approximately 1,896,800, or 81 per cent, are *residential* consumers (R. 1343, 1373). Approximately 427,100 are commercial consumers, which include the "wholesale" customers already mentioned and the many thousands of small factories, establishments, wholesale and retail shops, restaurants, hotels, churches, schools, charitable institutions and hospitals, within the local territory (R. 1373). The proportion of *residential* consumers among the petitioners' gas consumers is even higher (R. 1344).

Although the bulk of the petitioners' business, in terms of both quantity of service and number of customers, consists of residential and local consumers, the Court below pointed out that the petitioners also have certain customers who, in turn, are engaged in interstate commerce (R. 1740). Special mention was made of the fact that the petitioners supply electric energy to the following railroads for use for light and power in operating locally their prop-

erties and trains, including trains which go interstate: New York Central, New York, New Haven and Hartford, and the Hudson and Manhattan Railroads (R. 1340). Steam is supplied to the Pennsylvania Railroad which it uses to operate switches in its tunnel under the Hudson River.

In the year 1936, the petitioners' total sales of electric energy to railroads were 376,800,766 kilowatt hours. Their sales of electric energy to all of their consumers totalled 5,130,976,460 kilowatt hours. The revenues realized from these sales to railroads were $3,112,902.92. The revenues realized from their total sales of electric energy were $180,885,045.65. In terms of percentages, 7.34% of the petitioners' total sales of electric energy was to railroads; only 1.72% of their total revenues from sales of electric energy came from the railroads (R. 1347).

The New York State Labor Relations Act is all-inclusive of the provisions of the National Act, and was enacted for the purpose of extending to the labor relations of employers engaged in local, intra-state enterprises a supervision similar to that designed by the National Act as to employers in interstate commerce. In the instant case, the National Board and the Court below have held that although the petitioners are engaged only in local, intra-state business, the jurisdiction of the State Board over them must give way to that of the National Board, even though there is no evidence of a strike, threatened interruption of service, or any inadequacy of the State Act or the State Board.

The Court below properly observed (R. 1739) that "It is not contended that the petitioners are themselves engaged in commerce as so defined" (in the National Act). The Court based its decision chiefly on the fact that the petitioners supply service to some consumers who, in turn, engage in interstate commerce (R. 1741). The Court did

not consider it necessary to decide "whether their [petitioners'] importations of raw materials are alone enough to bring them under the Board's jurisdiction. It is the use which some of their customers make of the electric energy and steam purchased from the petitioners that furnishes the Board its main ground for claiming jurisdiction" (R. 1741).

As to the considerations urged against construing the National Act so as to supersede the State Act and to bring under Federal jurisdiction local, operating public utility companies engaged only in intra-state business, the Court said: "We are not unmindful of the persuasive force of these arguments" (R. 1742). It also recognized that "None of the Labor Board cases decided by the Supreme Court has presented a situation like that at bar" (R. 1742).

The complaint was filed on May 12, 1937 (R. 7-16). It was based on a charge filed by the United on May 5, 1937 (R. 4-6). It alleged unfair labor practices, in violation of Section 8, sub-divisions (1), (2) and (3), and Section 2, sub-divisions (6) and (7), of the National Act (R. 16). The complaint tendered no issue as to *representation* or an election, under Section 9(c) of the Act.

A month before, on April 20, 1937, the petitioners had announced to their employees (R. 1204) their agreement with Mr. Tracy, International President of the Brotherhood, to enter into collective bargaining contracts with the Brotherhood, *in behalf of its members among the employees* (R. 1223, 1395). At that time, the number of employees belonging to the Brotherhood of the American Federation of Labor was not known to the management (R. 1222); the petitioners had recently acquired two generating stations whose employees were known to be members of the

Brotherhood or of the Federation (R. 1216, 1222). At the time of the hearings before the Board (June 29, 1937), it was the undisputed testimony (R. 1212, 1418), and the Court below found (R. 1745), that the Brotherhood members included 30,000 out of 38.000 eligible employees of the petitioners. These contracts with a substantial majority of the employees were and are considered of vital importance to the petitioners, who are charged by the State and City of New York with a responsibility for rendering *continuous* service to all customers, including those engaged in interstate commerce. The contracts stipulate, among other things, against resort to strikes or lock-outs and provide a system for the arbitration of all disputes without cessation of work, thereby giving practical assurance against interruption of service (R. 1428, 1429).

The complaint, in its original form nor as freely amended from time to time up to the last day of the hearings (see R. 7, 13, 14, 15), did not even mention the contracts, much less attack their validity. At no time during the hearings was any statement made, by or in behalf of the Board, that the validity of the contracts was in issue. Nevertheless, Section 1(f) of the Board's Order requires the petitioners to "Cease and desist from: * * * Giving effect to their contracts with the International Brotherhood of Electrical Workers" (Appendix "A" hereto).

The Court below was under the misapprehension that "The contracts were introduced by the petitioners in support of a contention that the issue of coercion of employees was thereby rendered moot." The contracts were in fact produced by the petitioners at the request of counsel for the Board (R. 868-870). A photostat copy of a typical contract was offered in evidence by counsel for the Board.

and received, on June 17, 1937, as *Board* Exhibit No. 14 (R. 870-871). Subsequently, printed copies of all of the agreements became available, and were each "produced at the request of the Board" and were received (R. 1230).

The complaint had alleged that the Brotherhood was "dominated, supported and interfered with" by the petitioners (R. 15). The claim was in effect that this long-established international labor organization, the members of which included 80 per cent of the petitioners' employees, was in effect a "company union," outside the protection of the Act under Section 2(5) thereof (R. 280). This attack upon the integrity and independence of the Brotherhood was not sustained by the Board, which dismissed so much of the complaint as made any charge under Section 8(2) (R. 130), or by the Court.

The Court below said that "It is not so clear, however, that invalidating the contracts is an appropriate Order against the petitioners" (R. 1745). It recognized that the finding as to the independence of the Brotherhood made the case unlike that decided by this Court in *National Board* v. *Pennsylvania Greyhound Lines,* 302 U. S. ——, where the dis-establishment of a company-dominated union was involved. The Court said: "Since the Brotherhood is not dominated, supported or interfered with by the petitioners, it is not immediately obvious that the employees' right to self-organization will be injured by allowing the contracts to be carried out" (R. 1745). The Court further pointed out that, under Section 1, subdivisions (a) (b) (c) (d) (e) (g) and (h), of the Order, the petitioners' employees would have "complete freedom to join United in preference to the Brotherhood, or to join neither." With apparent reluctance, the Court concluded that the Board's action was

not "so unwarranted as to necessitate deleting clause (4) from the Order" (R. 1746).

The Board denied the petitioners an opportunity to present and complete their case, by refusing, even after a vital amendment of the complaint had been allowed without notice (R. 1312), to permit the calling of witnesses present in the hearing-room on the one day devoted to petitioners' proofs (R. 1315). The Court below considered this refusal to have been "unreasonable and arbitrary" (R. 1747), but pointed out that the petitioners had not asked *the Court* for the taking of additional evidence, and so sustained the findings made by the Board upon evidence thus incomplete.

A Trial Examiner named by the Board held the hearings. No member of the Board saw any of the witnesses or heard any of the testimony. The case was "transferred" by the Board from the Trial Examiner unto itself, and "continued before the Board" (R. 64). The Trial Examiner made no intermediate report or findings, as contemplated by its Rule 32; the findings were made only by Board members, who had heard none of the evidence; the Board gave the petitioners no hearing before the Board, as required by Sections 29 and 37 of the Board's Rules, although such a hearing had been requested (R. 19); and the petitioners were given no opportunity for oral argument or for the submission of a brief *to the Board* (the petitioners having only submitted a brief to the Trial Examiner, in aid of his preparation of findings, which he never made).

As to the Board's procedure above summarized, the Court below said that "This procedure is not one likely to inspire confidence in the impartiality of the proceedings", but that "though we do not commend such procedure, we

cannot say that it has deprived the petitioners of due process of law" (R. 1743).

A finding by the Board that the petitioners had discharged six employees because of union activities, contrary to Section 8(3) of the Act, was affirmed by the Court with a statement that "We cannot say that the record is wholly barren of evidence to support the charge * * *." Reinstatement with back pay was ordered (R. 1746).

B. Questions Presented

(1) Does the National Labor Relations Act authorize the Board to exercise jurisdiction over the petitioners, which are local operating public utilities doing business wholly within the City of New York and an adjacent county, are concededly not engaged in "commerce" as defined in the Act, and are subject to plenary regulation by the State of New York under its Public Service Law and its State Labor Relations Act?

(2) If the National Act was intended to confer on the Board jurisdiction over the petitioners as to the matters here complained of by the Board, is the Act constitutional as so construed and applied?

(3) Where the Trial Examiner designated by the Board made no report or findings and none of the members of the Board saw or heard any of the witnesses, and the Board gave to the petitioners no opportunity to be heard before the Board (although such an opportunity was requested) nor any opportunity to object to or be heard as to any proposed findings, do the findings of fact made by the Board under such circumstances conform to the requirements of the Board's Rules and to due process of law?

(4) Were the petitioners denied due process of law by the Trial Examiner and the Board, by their refusal to hear evidence sought to be introduced at the hearings before the Trial Examiner in behalf of the petitioners?

(5) Where, as the Court below found, the refusal by the Trial Examiner and by the Board to hear evidence sought to be introduced at the hearings before the Trial Examiner in behalf of the petitioners was "unreasonable and arbitrary," were the findings of fact made by the Board on the basis of a record thus arbitrarily restricted nevertheless to be taken as conclusive if the petitioners did not ask the Court for the taking of the evidence at the time of the proceedings to enforce or review the Order?

(6) In the absence of evidence that the alleged unfair labor practices with which petitioners were charged have led or are likely to lead to an actual obstruction or interference with interstate commerce, may the Board assume jurisdiction over local activities by assuming that if the practices were not stopped they might cause a strike, the strike might suspend the petitioners' service, and interstate commerce might be disrupted?

(7) Were the petitioners denied due process of law by Section 1(f) of the Board's Order requiring the petitioners to cease and desist from giving effect to their collective bargaining contracts with the Brotherhood, when no question as to the validity of these contracts was raised in the complaint or at the hearings, and the Board dismissed so much of the complaint as involved any charges that the petitioners had dominated or interfered with the formation or administration of, or had contributed financial or other support to, the Brotherhood contrary to Section 8(2) of the Act?

C. Reasons Relied on for the Issuance of the Writ

1. The decision of the Circuit Court of Appeals involves important questions as to the construction and constitutional application of the National Labor Relations Act which have not been, but should be, decided by this Court. The opinion of the Court below reflects, we submit, an absence of conviction that the petitioners are constitutionally subject to the Act. "None of the Labor Board cases decided by the Supreme Court has presented a situation like that at bar." In no case presented, has it been determined by this Court that the National Act confers jurisdiction on the Board as to an employer who concededly is not itself engaged in "commerce" as defined in the Act. Nor has it been decided by this Court that the Act gives the Board jurisdiction over local public utilities which operate wholly within a single State and are subject to plenary regulation by the State as to practically every phase of their business, including supervision by a State Labor Relations Board. And where, as in this case, there is and could be no finding or showing that the State Labor Relations Board would not deal effectively and adequately with the very matters which give rise to claim of Federal jurisdiction, this Court has finally to determine whether or not the labor relations of such an employer are brought under the jurisdiction of the National Board because of its assumption that such a labor dispute or strike would or might affect interstate commerce carried on by a few of the employer's customers.

2. This Court has said that: "Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to federal control, and hence to lie within the authority conferred upon the Board, is

left by the statute to be determined as individual cases arise." *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 32. We submit that this petition brings here an individual case of such scope and significance as a precedent that this Court should review and determine it. If the National Act is to be held applicable to these petitioners upon the main ground relied upon by the Circuit Court of Appeals, or upon that ground together with a consideration of the petitioners' consumption of raw materials originating outside the State, then rare is the public utility company anywhere in the United States which will not be brought under the jurisdiction of the National Board, and State jurisdiction will cease to exist. The Circuit Court of Appeals expressly recognized "the persuasive force" of our contention that to extend this National Act to petitioners subject to regulation under an all-inclusive State Labor Relations Act and State Public Service Law enacted in furtherance of the health, safety and welfare services of the State, is to push the concept of "affecting commerce" to unintended extremes and essentially to obliterate the dual system of government provided by the Constitution.

3. If the decision and reasoning below are to stand, a re-statement of constitutional law should contain a principle to this effect: The National power over local industry can be pushed and extended, under the commerce clause, to apply to all local, wholly intra-state enterprisers who sell goods or render any substantial service to anyone who is engaged in interstate or foreign commerce. All that would be necessary to confer such jurisdiction on the National Board would be that the Board itself find that if there were to be a labor dispute among the employees of the local, intra-state employer, and if such employees were to go on strike, and if such strike were to suspend the employer's op-

erations, such stoppage might affect the employer's service or supply of goods to others and therefore might tend to affect interstate commerce carried on by the others. Such a method of extending Federal power over local concerns, through a series of assumptions and hypotheses found by a Federal board, seems to us to be contrary to the principles, among others, expressed by the Chief Justice in the *Carter Coal* case (298 U. S. 238, 318), that "If the people desire to give Congress the power to regulate industries within the State, and the relations of employers and employees in those industries, they are at liberty to declare their will in the appropriate manner, but it is not for the Court to amend the Constitution by judicial decision."

4. The decision of the Circuit Court of Appeals presents several important questions concerning the application of the constitutional requirements of due process of law to proceedings of administrative agencies—questions which have not been, but should be, finally determined by this Court. The Court below seems to us to have indicated the propriety of such a review. As to the Board's procedure in the instant case, the Court said: "This procedure is not one likely to inspire confidence in the impartiality of the proceedings. It results in the findings of fact being made by persons who did not see the witnesses—a matter which may have far-reaching consequences in view of the very limited power conferred upon the Courts to review the Board's findings of fact. But, though we do not commend such procedure, we cannot say that it has deprived the petitioners of due process of law." Again: The Court said that the Board's refusal to hear petitioners' witnesses present in the hearing-room was "unreasonable and arbitrary," but the Court sustained findings based on a

record thus incomplete. The determination of these questions of fair hearing will serve as a precedent and guide for National and State administrative agencies, as well as adjudicate the rights of the petitioners.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of all proceedings in case numbered on its Docket No. 177, and entitled as above shown, and that said decree of the Circuit Court of Appeals may be reversed or modified by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Court may seem just and proper.

New York, March 31, 1938.

WILLIAM L. RANSOM,
PINCUS M. BERKSON,
Counsel for the Petitioners.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The opinion of the Court below has not been officially reported, and is at R. 1737. The decision and Order of the Board are at R. 65-130. Its Order is Appendix "A" to this petition.

Jurisdiction

This proceeding involves questions arising under the Constitution and laws of the United States. Jurisdiction is believed to be conferred by Section 10(e) of the National Labor Relations Act (*Act of Congress, July 5, 1935; 49 Stat. 10*) and by Section 240 (a) of the Judicial Code as amended (*43 Stat. 938*).

Statute involved

The pertinent parts of the National Labor Relations Act will be found in Sections 1, 2 (5), (6) and (7), 7, 8 (1), (2) and (3), and 10 (a), (b), (c), (e) and (f) thereof. Under the decision and Order of the Board and the decision and Order of the Court below, substantial questions of law are presented as to the construction, validity and applicability of the statute, the intended jurisdiction of the Board, the regularity and conformance of its proceedings and findings to due process of law, and the sufficiency of the support for its findings and Order.

Specification of errors to be urged

(1) The Circuit Court of Appeals erroneously decided that the National Act authorizes the Board to exercise its

jurisdiction over the petitioners and over the matters complained of by the Board.

(2) The Court below erroneously decided that the provisions of the National Labor Relations Act may be validly enforced against the petitioners under the Constitution.

(3) The Court below erroneously decided that the procedure whereby the case was transferred to the Board without any findings of fact or conclusions of law being made by the Trial Examiner who had heard the witnesses, and whereby the decision by the Board was made without notice or opportunity for the petitioners to be heard by the Board or otherwise with respect to any findings of fact or conclusions of law of the Board, was in compliance with the Rules of the Board and did not deny the petitioners due process of law.

(4) The Court below erroneously decided that the rulings by the Trial Examiner and by the Board, refusing to hear evidence sought to be introduced in behalf of the petitioners, were valid and did not deny the petitioners due process of law.

(5) The Court below erroneously decided that the Order of the Board requiring the petitioners to cease and desist from giving any effect to their collective bargaining contracts with the Brotherhood is valid and does not deny the petitioners due process of law.

(6) The Court below erroneously decided that the findings of fact of the Board were validly made and that they were sufficiently sustained by proper evidence, whereas the purported findings of fact upon which the Board as-

serted and exercised jurisdiction were a series of assumptions and hypotheses unsupported by evidence.

(7) The Court below erroneously decided that the conclusions of law of the Board are valid.

(8) The Court below erred in holding that the National Act, as construed, applied and administered by the Board in this case, complies with the Fifth and the Tenth Amendments to the Constitution of the United States.

ARGUMENT

I

The decision of the Court below involves important questions as to the construction and constitutionality of the National Labor Relations Act as applied to the petitioners

This Court has never decided whether or not the National Act vests the Board with jurisdiction over local, wholly intra-state public utilities subject to plenary State regulation. And especially significant it is that there has been here no finding that the State Labor Relations Act and Board have been or are in any way inadequate to prevent the very labor practices here complained of, as to such local utilities, from obstructing interstate commerce. This Court has not held that such purely local matters as were the subject of complaint here "affect commerce in such a close and intimate fashion as to be subject to Federal control" (*Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 30, 32). This Court has not held any intra-state employer to be subject to the jurisdiction of the National Board

solely because a strike among its employees might tend to affect *interstate commerce carried on by others.*

In the *Jones & Laughlin* case, this Court adverted (pages 37-39) to the extent to which intra-state matters, dealing *primarily* with a local activity, may come under National authority predicated upon the commerce clause. Under the authorities there cited, we understand that even though such local activity closely and intimately affects interstate commerce, it may become subject to such National authority secondarily and conditionally, to the extent of correcting or taking the place of a defaulted State control found to be prejudicing interstate commerce. The failure of the State to control adequately the primarily local concern should at least be precedent to National intervention and authority over such local matters. *Florida* v. *United States*, 282 U. S. 194. The underlying principle of the *Florida* case is given effect, as we see it, in *Pennsylvania* v. *Williams, et al.*, 294 U. S. 176, and in *Hopkins Savings Assn.* v. *Cleary*, 296 U. S. 315.

Why should the petitioners' business, which is primarily and functionally a local activity, be immediately and unconditionally subject to the National Labor Relations Act, notwithstanding the all-inclusive New York State Labor Relations Act and the absence of any finding of its inadequacy?

On the record in this case, it is manifest that if the operations or labor relations of the petitioners come within the broad definitions of the Act at all, they are included only in "affecting commerce" in that they are "tending to lead" to a labor dispute burdening or obstructing commerce. "Affecting commerce," together with "commerce" as defined in the Act, has been translated by this Court as follows:

> "This definition is one of exclusion as well as inclusion. The grant of authority to the Board * * * purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds." *Labor Board* v. *Jones & Laughlin, supra* (page 31).

Under this interpretation of the definition, are not the petitioners, engaged as they are primarily and exclusively in local activity, or at the most only within some area so remote to "commerce" as that possibly contemplated by the clause "tending to lead," outside the constitutional intent of the Act?

The Court below here took the position that the problem should be "approached as a question of fact, namely, 'what will be the result upon commerce of a *labor dispute* between the petitioners and their employees.'" In view of the supposed functional dependence of the railroads upon the petitioners' service, it was concluded that: "Should such a dispute *result in interrupting the petitioners' service,* the effects upon commerce would be catastrophic." The idling of the railroads, stoppage of interstate communication, and the going out of the lights which aid interstate ferries and foreign steamships, would constitute "effects we cannot regard as indirect and remote."

We have been admonished that interstate commerce (and, we assume, intra-state commerce as well) is a "practical conception"; that the question of "direct and indirect effects" upon commerce may not be disposed of in an "intellectual vacuum"; that Federal power may not be extended "so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, *in view of our complex society,* would effectually obliterate

the distinction between what is national and what is local * * *"; that "*The question is necessarily one of degree.*" *Labor Board v. Jones & Laughlin, supra* (page 37).

Even the "effects" upon commerce contemplated by the Court below are indeed, we submit, "indirect and remote," from the subject-matter of the National Labor Relations Act, even when the question is approached "as a question of fact." The "ifs" in the causal sequence are evident. These "ifs" are as follows: *If* a labor dispute should arise between the petitioners and their employees, and *if* that dispute should lead to a strike, and *if* that strike should culminate in a sufficient shut-down of the petitioners' service, all of which are as a matter of actualities unsupported assumptions, the effects upon commerce would be realized. But there is and could be no finding that the State Board would not act as effectively and completely to avert such dispute, strike, and the supposed effects. In all of the Board's series of assumptions, no credit is accorded the office and functions of the Labor Relations Board of the State of New York in this connection, or of any other public authorities of the City or State, who would be immediately and primarily concerned by the very incipiency of such a labor controversy. And certainly there is no basis, we submit, for an assumption that the National Board would be any more effective than the State Board in *absolutely preventing* the highly improbable catastrophe posed by the Court below.

The facts here show that the petitioners' business is primarily and predominantly "local," primarily and predominantly a matter of "internal concern" of the State of New York; that their business is necessarily and properly considered to be exclusively within the jurisdiction of the State of New York because the directness and imminency

of its relation to the health, safety, convenience and welfare of the millions of people who reside and do business day by day in the City of New York, entirely subordinate any of its aspects which might be separately identified as of National public interest for any useful purpose of Federal regulation; that in terms of human, social or even economic welfare, *desiderata* concerning the "free flow of commerce" would pale in comparison with the problems of health, sanitation, safety and convenience of its own inhabitants, if New York City were to be without light and power for its millions of homes, and thousands of office buildings, hospitals, schools, libraries, hotels, restaurants, theatres, shops and public streets; that the State of New York should have the primary, undivided, police power to handle such untoward situation if ever it became a reality; that it should have like power to regulate, control and supervise the petitioners' business in anticipation of and with a view of preventing any such catastrophe; and that there has been no showing that the regulatory measures taken by the State and City of New York in furtherance of the protection of its own residents in New York City, have or will work otherwise than to facilitate and protect the interests of interstate and foreign commerce. The proposed extension of Federal jurisdiction into these activities which are primarily local and are subject to present and adequate regulation by the State Labor Board is not, we believe, either "*necessary or appropriate*" under the National Act, and is contrary to the constitutional system of dual government.

II

The decision of the Court below condoned various proceedings, findings and rulings of the Board which contravene due process of law.

Collective bargaining agreements between the petitioners and the Brotherhood, with a membership as the Court found of 30,000 of the petitioners' 38,000 eligible employees, were nullified by the Order of the Board. That these agreements provide for a system of arbitration of disputes relating to employment and stipulate against strikes and lock-outs seems to have borne no weight with the Board, notwithstanding the general purpose of the Act to eliminate sources of industrial strife.

This invalidation was ordered without notice or opportunity of hearing to the petitioners or the Brotherhood, and, indeed, without mention of the contracts or their validity in the charge or in the complaint, or without challenge of their validity at any time during the hearings. Furthermore, the Order was made although the Board found that the petitioners had in no way offended Section 8(2) of the Act—that they had not dominated, interfered with, or contributed any support to the Brotherhood.

As the Court below noted, this last finding makes the case unlike *National Board* v. *Pennsylvania Greyhound Lines*, 302 U. S. —, in which the union had been reared and dominated by the employer as a "company union." The Court also found that, by reason of the other provisions of the Board's Order, the invalidation of these contracts was unnecessary to give the petitioners' employees "complete freedom to join United in preference to the Brotherhood, or to join neither."

Upon these considerations, we submit that the Board acted with apparently punitive purpose and partiality against the petitioners and the Brotherhood, and that its Order unnecessarily confiscates their contracts, which were conceived and accomplished with a view to the public interest.

The Board directed the Trial Examiner to permit Mr. Carlisle and Mr. Dean to testify at the final hearing on July 6th, but that they were to be "the only two witnesses who will be permitted to testify on your behalf." The case was closed on July 6th. Witnesses present in the hearing room were refused an opportunity to be heard. Nearly three months later, on September 29, 1937, without notice to the petitioners, and without any intermediate findings or report by the Trial Examiner as contemplated by the Board's Rule 32, the Board ordered that "this proceeding be transferred to and continued before the Board" (R. 64). There were no further proceedings before the Board, and at no time were the petitioners or the Brotherhood given any notice or opportunity to be heard or to present any argument or any brief before the Board. The decision, findings, and Order of the Board were made on November 10, 1937.

"The inexorable safeguard which the due process clause assures is * * * that the trier of the facts shall be an impartial tribunal; that no finding shall be made except upon due notice and opportunity to be heard; that the procedure at the hearing shall be consistent with the essentials of a fair trial; and that it shall be conducted in such a way that there will be opportunity for a Court to determine whether the applicable rules of law and procedure were observed."

St. Joseph Stock Yards Co. v. *United States*, 298 U. S. 38, 73; see, also,

Morgan v. *United States*, 298 U. S. 468, 480;
Interstate Commerce Commission v. *Louisville and Nashville Railroad Company*, 227 U. S. 88, 91;
Ungar v. *Seaman*, 4 Fed. (2d) 80, 82-83 (C. C. A. 8).

If, as the Court below found, the Board's refusal to hear the petitioners' witnesses was "unreasonable and arbitrary," and its *ex-parte* transfer and decision of the case were a procedure not "likely to inspire confidence in the impartiality of the proceedings," we think it is clear that the "applicable rules of law and procedure," essential to due process, were *not* observed.

Notwithstanding the Court's conclusion that the Board's refusal to hear petitioners' witnesses was "unreasonable and arbitrary," it appears to have condoned the action on the ground that the petitioners did not apply *to the Court* under Section 10(e) of the Act for an order to hear the witnesses. We respectfully submit that the Court erred in this judgment because, in such a case, the remedy of Section 10(e) would be merely formal and illusory. This is true because of "the very limited power conferred upon the Courts to review the Board's findings of fact," mentioned by the Court itself.

We will further refer to the apparent extreme to which the Court went in sustaining the Board's findings of fact that the petitioners discharged six named employees because of their union activities, contrary to Section 8(3) of the Act. The Court seems to have sustained those findings upon the following basis: "We cannot say that the record is *wholly barren of evidence to support* the charge * * *."

We respectfully submit that the Court again erred by this determination in this case because the provision of Section 10(e) of the Act, that the findings of the Board as to the facts, if supported *"by evidence,"* shall be conclusive, is applicable only if there is a substantial preponderance (when there are conflicting evidentiary data) to support the findings. *Appalachian Electric Power Co.* v. *National Labor Relations Board,* 93 Fed. (2d) 985, 989 (C. C. A. 4).

Conclusion

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the new and far-reaching questions of Federal law present in this case may be decided by this Court, and that to such end the petition for a writ of certiorari should be granted.

WILLIAM L. RANSOM,
PINCUS M. BERKSON,
Of Counsel.

APPENDIX A

ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with

discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and

to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of

America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

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No. 19

IN THE

Supreme Court of the United States

OCTOBER TERM—1938

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., *et al.*
Petitioners

against

NATIONAL LABOR RELATIONS BOARD
Respondent

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION
Intervenor-respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM—1938

No. 19

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., *et al.*
Petitioners

against

NATIONAL LABOR RELATIONS BOARD
Respondent

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION
Intervenor-respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONERS

The opinion of the Court below (R. 1737-1747) is reported in 95 Fed. (2nd) 390. The decision, findings, conclusions and order of the National Labor Relations Board (hereinafter usually referred to as "the Board") are reported in 4 N. L. R. B. 10 and are at R. 65-130.

Jurisdiction

The jurisdiction of this Court has been invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1935 (c. 229 § 1; 43 Stat. 938; 28 U. S. C. A. § 347 (a)), and Section 10 (e) and (f) of the National Labor Relations Act (Act of Congress, July 5, 1935; 49 Stat. 10).

The petition below (R. 1473-1553) asked for review of the decision, findings, conclusions and order of the Board, which were adverse to the petitioners. The Board answered (R. 1691-1703) and also cross-petitioned for enforcement of its order (R. 1703-1711). The decree of the Circuit Court of Appeals entered on March 21, 1938, granted enforcement (R. 1748).

As a "person aggrieved" by the Board's order, the International Brotherhood of Electrical Workers and its seven Local Unions among the petitioners' employees (hereinafter usually referred to as "the Brotherhood") also filed a petition for review (R. 1554-1643), under Section 10 (f) of the Act.

Writs of certiorari were granted by this Court to the petitioners and the Brotherhood on May 16, 1938.

Statute Involved

The statute involved is the National Labor Relations Act (hereinafter referred to as "the Act"). The particular provisions are Sections 1, 2 (5), (6) and (7), 6, 7, 8 (1), (2) and (3), and 10 (a), (b), (c), (e) and (f).

Pertinent provisions of the Rules promulgated by the Board pursuant to Section 6 of the Act also are involved. These are shown as an Appendix of this brief.

Questions Presented

(1) Does the National Labor Relations Act authorize the Board to exercise jurisdiction over the petitioners, which are local operating public utilities[1] doing business

[1] The petitioners will, for the purposes of this brief, be characterized inclusively as local operating public utilities. The petitioner Consolidated Telegraph and Electrical Subway Company, however, is not a public utility (R. 1324), does not sell any utility service, but maintains and operates sub-surface ducts under contracts with the City of New York (R. 1325).

wholly within the City of New York and the adjacent county of Westchester, in the State of New York, were not claimed below[1] to be themselves engaged in "commerce" as defined in the Act, and are subject to plenary regulation by the State of New York under its Public Service Law and its State Labor Relations Act?

(2) If the National Act was intended to confer on the Board jurisdiction over the petitioners as to the matters here complained of by the Board, is the Act constitutional as so construed and applied?

(3)[2] Where the Trial Examiner designated by the Board made no report or findings and none of the members of the Board saw or heard any of the witnesses, and the Board gave to the petitioners no opportunity to be heard before the Board (although such an opportunity was requested), nor any opportunity to object to or be heard as to any proposed findings, do the findings of fact made by the Board under such circumstances conform to the requirements of the Board's Rules and to due process of law?

(4) Were the petitioners denied due process of law by the Trial Examiner at the direction of the Board, by their refusal to hear evidence sought to be introduced in behalf of the petitioners?

(5) Where, as the Court below found, the refusal by the Trial Examiner, at the direction of the Board, to hear certain evidence sought to be introduced in behalf of the

---

[1] The Court below said (R. 1739): "It is not contended that the petitioners are themselves engaged in commerce as so defined [in the Act]." See, also, the Board's statement, in its cross-petition for enforcement, as to the territorial scope of the petitioners' business (Answer, R. 1703-1704).

[2] Questions (3) to (7), both inclusive, are to be considered in conjunction and cumulatively, as presenting the question whether or not the Board denied to the petitioners a full and fair hearing and impartial determination according to due process, and as to whether or not the doing of these various things in one proceeding show, when taken together, that the Board's hearing and determination as to the petitioners were unfair, arbitrary and lacking in due process.

petitioners, was "unreasonable and arbitrary", are the findings of fact made by the Board, on the basis of a record thus arbitrarily restricted, nevertheless to be taken as conclusive if the petitioners, at the time of the proceedings to review the Board's order, did not ask the Court for an order directing that the evidence be taken and made a part of the transcript?

(6) In the absence of evidence that the alleged unfair labor practices with which petitioners were charged have led or are likely to lead to an actual obstruction or interference with interstate commerce, and in the absence of evidence of the inadequacy of the State system of regulation of petitioners' labor relations in behalf of the predominant local interest, may the Board establish and exercise Federal jurisdiction over local activities such as those of the petitioners, by *assuming* that if the practices were not stopped they *might* cause a strike, the strike *might* suspend the petitioners' service to some extent, and interstate commerce engaged in by others *might* thereby be burdened or obstructed?

(7) Were the petitioners denied due process of law by Section 1(f) of the Board's order, which would require the petitioners to cease and desist from giving effect to their collective bargaining contracts with the International Brotherhood of Electrical Workers, a labor organization affiliated with the American Federation of Labor, when no question as to the validity of these contracts was raised in the complaint or stated at the hearings, which closed without any notice or indication that the validity of the contracts was in question or was to be determined, and when the Board dismissed so much of the complaint as involved any charges that the petitioners had dominated or interfered with the formation or administration of, or had contributed financial or other support to, the Brotherhood, contrary to Section 8(2) of the Act?

SUMMARY STATEMENT OF THE PROCEEDINGS

The charge

The proceedings before and by the Board were initiated by the filing of a "charge" (R. 4-6) by the United Electrical and Radio Workers of America (hereinafter usually referred to as "the United"), a labor organization affiliated with the Committee for Industrial Organization (hereinafter usually referred to as "the CIO"). The complaint of the Board was based wholly on this charge (R. 7-16). In the review proceedings in the Court below, the United was admitted as an intervenor, upon its application (R. 1737).

The "charge" was sworn to by Martin Wersing on May 5, 1937 (R. 6). It alleged "unfair labor practices" within the meaning of Section 8(1), (2) and (3) of the Act, in that the petitioners were said to have discharged five named employees because of their membership in and activity in behalf of a labor organization (R. 4-5); to have interfered with their employees' right of self-organization "by contributing financial and other support" to the Brotherhood (R. 5) and by coercing employees "to disaffiliate from labor organizations of their own choosing and to join the I. B. E. W." (R. 5); and to have employed so-called "industrial spies" (R. 5). Although the charge was sworn to two weeks after the Companies had announced, to their employees and publicly (R. 1204-1205), their recognition of the Brotherhood and the negotiation of collective bargaining contracts with the Brotherhood in behalf of its members (R. 1211-1212; Board's Exhibit No. 14, printed at R. 1394-1405), the "charge" did not mention, much less make any attack on, the contracts.

The Board's complaint and the various amendments of it

The complaint by the Board[1] was served on May 12, 1937. It related only to the discharge of the five employees and to alleged "unfair labor practices" (R. 7-17). It tendered no issue as to the *representation* of employees, which would have arisen under Section 9(c) of the Act; and the presence of such an issue in the case was repeatedly disclaimed by counsel for the Board (R. 279, 525-526), who also said the complaint was not "directed against the I. B. E. W." (R. 279, 285).

As served[1], the complaint by the Board referred to the Brotherhood only in Paragraph 22 (R. 15) and did not allege that anything set out in Paragraph 22 "affected commerce" or had any relation to "commerce" as defined in the Act (Pars. 23 and 24; R. 15-16). This defect in such allegations as related to the Brotherhood was dealt with by an amendment which the Board allowed itself on June 14th (R. 15, 526), without notice to the Brotherhood. Neither as served on May 12th nor as at any time amended up to or at the closing of hearings on July 6th, did the complaint make any allegation against, or even refer to, the collective bargaining contracts between the Companies and the Brotherhood.

The complaint as served was amended several times during the hearings and at the final hearing, sometimes without prior notice to the petitioners as well as over their objections (R. 40-41, 164, 408, 526, 1196). Some of the amendments changed substantially the nature and scope of the proceeding (R. 408, 526, 1196). The last amendment[1] was made without notice and over objections; it was on the last day of the hearings (July 6, 1937), ostensibly to conform the complaint to the proofs adduced in behalf of the Board (R. 1196), thereby broadening the complaint to embrace events,

[1] As shown at R. 7, the text of the complaint as given in the Record is the text of the complaint *as served*. The various amendments allowed from time to time during the hearings (*exclusive* of that allowed on the day testimony was closed) are shown as foot-notes; e. g., R. 13, 14, 15. For this final amendment, see R. 1196; 1312, fol. 3935.

even those ante-dating the Act as well as the complaint, to which witnesses called by the Board had testified over repeated objections by the petitioners, as well as the numerous documents produced as exhibits at the Board's request[1] (e. g. R. 179, 193-194, 199, 320, 357, 358, 426, 430, 431, 436, 1107, 1198).

The Board's complaint as from time to time amended by the Board was at no time served, and no notice of any of the amendments was at any time served upon the Brotherhood (R. 408-409, 1568-1569). The Brotherhood did not appear or take part in the hearings before the Board (R. 1739).

As finally amended, the complaint (R. 7-16 and footnotes and R. 1196) alleged that:

(1) The Companies had discharged and refused to reinstate six named employees, because they joined and assisted a labor organization;

(2) The Companies had contributed and were contributing to the financial support of the Brotherhood and had coerced and were coercing their employees to join the Brotherhood;

(3) The Companies had employed and were employing spies for the purpose of ascertaining the Union activities of their employees;

(4) The foregoing activities by the Companies had "a close, intimate and substantial relation" to commerce as defined in the Act, etc. (R. 15-16); and

(5) By their foregoing activities, the Companies had engaged in and were engaging in unfair labor practices "affecting commerce" as defined, and contrary to Section 8(1), (2) and (3), and Section 2(6) and (7) of the Act.

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[1] See list of exhibits (R. v to xi).

The petition by the Companies for a hearing directly by the Board

Immediately after the complaint of the Board had been served, the petitioners appeared specially and on May 17th petitioned the Board (R. 19-33) for a hearing "directly by the Board" on the question of jurisdiction and on "any further proceedings herein" (R. 21, 32), and asked also that the question of jurisdiction be heard separately and before hearing upon the various charges set forth in the complaint (R. 21, 32). The request of the Companies for an opportunity to be heard by and before the Board itself was thus brought to the attention of the Board itself (R. 21). The same request was renewed orally, on June 3rd, the day the hearings opened (R. 143).

The Board denied the petitioners' motion for a hearing before itself in advance of hearings, but decided the case without acting on petitioners' request for a hearing by the Board itself in "any further proceedings herein." By an order made only the day before the hearings began (R. 143), the Board refused any hearing as to the question of jurisdiction before the case should be heard generally (R. 33-39), and never granted the requested hearing before itself, as to jurisdiction or anything else. The petitioners participated in the hearings with full reservation of rights at all times (R. 19-21, 42-63, 135).

The answer of the Companies

The answer of the Companies (R. 42-62) was filed on June 16th (R. 63, 802, 803). It related to the complaint as amended to June 14, 1937 (R. 42). It contained appropriate denials and raised the jurisdictional questions also by affirmative defenses (R. 59-60).

The Companies' recognition of the Brotherhood and negotiation of collective bargaining contracts with the

Brotherhood had been announced to the employees and to the public press on April 20th (R. 1204-1205). The first two of these contracts had been executed on May 28th (R. 1229). On June 9th, counsel for the Board asked that the Companies furnish copies of the contracts recently executed (R. 868). On June 16th, counsel for the Board asked on the record that the contracts and correspondence be produced (R. 869). This was done; the correspondence and a typical contract were produced and marked, on June 16th (R. 870-874; Board's Exhibit No. 14). Subsequently, as arranged, a printed copy of each of the contracts was marked in evidence (Exhibits Nos. 17-22).

The answer filed by the Companies on June 16th referred to the contracts with the Brotherhood as follows (R. 58):

> "Respondents further allege that, since April 20, 1937, they have severally negotiated collective bargaining agreements with the International Brotherhood of Electrical Workers and their respective local unions of that labor organization, in behalf of such employees of the respondents as belong to the International Brotherhood of Electrical Workers and such local unions, and that the membership of such local unions is believed by the respondents to represent more than a majority of the employees of each respondent. Such labor agreements negotiated with the International Brotherhood of Electrical Workers have in most instances been executed by and in behalf of both the respondents and the International Brotherhood of Electrical Workers and its local union, but in a few instances are in course of execution at the time of this Answer."

Although the existence and nature of the contracts were well known to the Board, and were before the Board, virtually throughout the hearings (which did not close until July 6th), the Board did not at any time amend its complaint so as to refer to the contracts or state any issue as to them, nor did the Board cause any statement to be made by its Trial Examiner or by its counsel, which would give any information of an intent on its part (if such an intent were then

entertained) to declare the contracts invalid and in effect dis-establish the Brotherhood as the collective bargaining agency for employees "who are members of the Brotherhood" (R. 1295, 1745).

On the last day of the hearings (July 6th), the Board allowed itself, at the request of its trial counsel, an omnibus further amendment of its complaint (R. 1196); but even then the complaint made no claim against the contracts. Likewise, it stood as the *undisputed* testimony, as the Court below found (R. 1745) that as of June 29th the Brotherhood and its Local Unions comprised eighty per cent (30,000 out of 38,000) of the Companies' eligible employees (R. 1418). In view of the state of the record and the Board's "last-minute" amendment of its complaint, the Companies asked and obtained leave to amend their answer so as to plead, as a third defense (R. 60, foot-note), that the making of these contracts had rendered *moot* the charges of coercion, restraint, etc. (R. 1200-1201).

The statutes pertinent to the Board's claim of jurisdiction

Any authority which the Board may assert and exercise as to the petitioners would arise from the following provisions of the Act:

Section 10(a) provides that "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce * * *."

Section 2(6) defines "commerce" as "* * * trade, traffic, commerce, transportation, or communication among the several States * * * or between any foreign country and any State * * *".

The term "affecting commerce", as used in the Act, is undertaken to be defined (or broadened) in Section 2(7) to mean "* * * in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or

tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce".

The jurisdictional issue here

The record and the Board's cross-petition[1] (R. 83-85, 1703-1705) seem to us to make clear that the Board bases its claim of jurisdiction over the petitioners upon the possible effects which a possible interruption of the petitioners' service might have upon *interstate commerce carried on by others*, in that:

> (1) Although the petitioners do not themselves sell or transmit anything in interstate or foreign commerce and their service is not resold by others in such commerce, some of the petitioners' *customers* are engaged in part in interstate or foreign commerce, including several interstate railroads and certain governmental agencies, and that these customers and *their* interstate commerce are to some extent dependent upon the continuity of the petitioners' service, for the carrying on of their operations;
>
> (2) A substantial part of the raw materials, such as coal and oil, which the petitioners use in producing the electricity, gas and steam which they sell locally in the City of New York and adjacent Westchester County is produced or fabricated outside of the State of New York and is shipped *by others* in interstate commerce to the petitioners, for their local consumption in producing local utility service, none of the *petitioners'* employees being claimed to be engaged in interstate transportation of goods; and
>
> (3) Although there was no evidence that the alleged unfair labor practices with which the petitioners were charged had caused any burden upon or obstruction of interstate commerce, and although there was no evidence that the matters complained of

[1] On the question of jurisdiction, the Board's asserted jurisdiction should be tested by the factual grounds alleged in its petition for enforcement (*Levering & G. Co. v. Morris*, 289 U. S. 103, 105).

> would cause any actual obstruction or interference with interstate commerce, the Board has been authorised to vest itself with jurisdiction over the petitioners and their local activities by making the *three-fold assumption* that if the practices were not stopped they might cause a strike, the strike might suspend the petitioners' service to some extent, and that such a suspension of the petitioners' service might affect interstate commerce carried on by others.

In its brief in opposition to the petition for a writ of certiorari in this cause, the Board stated its view of the jurisdictional question as follows (page 2):

> "Whether the National Labor Relations Act may validly be applied to a public utility system engaged in the business of distributing electric energy, gas, and steam wholly within the State of New York, which receives the major portion of the raw materials, supplies, and equipment used in its production operations from States other than New York, and which sells substantial quantities of electric energy, gas and steam to various important private and governmental enterprises engaged in interstate and foreign commerce, including agencies and instrumentalities of such commerce, which are dependent in their operations upon the uninterrupted supply by petitioners of electric energy, gas or steam."

The above statement is significant, but hardly complete. The facts that the petitioners carry on their business of public service "wholly within the State of New York," and do not sell or deliver anything outside the State of New York, and do not themselves transport in interstate commerce such materials as they buy from sources outside the State of New York, should, we think, be supplemented by the established evidence that the petitioners are local operating public utility companies supplying service predominantly for residential and domestic uses, to the inhabitants of one large city and an adjacent county, all within the State; that the marked predominance of the local and State interest is

manifest in many ways; that the State of New York already exercises plenary and most comprehensive jurisdiction, regulation and supervision over virtually every phase of their business and operations, including a State Labor Relations Act which is inclusive of the provisions of the National Act and intended to apply to employers, like the petitioners, who are doing an intra-state business in New York; and that no inadequacy of the State regulation of labor relations or need for superseding it with Federal control, has been shown.

The Court below stated the facts and pointed the jurisdictional issue as follows (R. 1739-1742):

> "The terms 'commerce' and 'affecting commerce' are defined in Section 2(6) and (7), 29 USCA sec. 152. *It is not contended that the petitioners are themselves engaged in commerce as so defined. They are local public utility corporations and their production and distribution of electricity, gas and steam are carried on solely within the City of New York and adjacent Westchester County.* • • •
>
> "The parent corporation and each of its subsidiaries, with one exception, is *a public utility company within the meaning of the Public Service Law of New York* and is subject to regulation by the State Commission. The one exception is Consolidated Telegraph and Electrical Subway Company, which maintains and leases to others of the petitioners space in sub-surface ducts. *The petitioners' labor relations are also subject to State regulation under a recent statute (Ch. 443, Laws of 1937), unless jurisdiction of the State Labor Relations Board must yield to that of the National Board.* • • •
>
> "The petitioners argue that they should not be chargeable for the independent acts of customers whom, by State law, they are compelled to serve. But the problem is not to be approached from the standpoint of vicarious liability. • • •
>
> *"It is true that the local consequences of a cessation of the petitioners' services would be equally, if not more, disastrous.* It is argued that considerations of the health, safety and convenience of the

> millions of people who live and work in New York City outweigh the National interest in protecting interstate commerce from disruption; that local public utilities have always been regarded as exclusively within the jurisdiction of the States, and that to extend the Federal jurisdiction to include them is to obliterate *pro tanto* our dual system of government, contrary to the admonition of the Chief Justice in the *Jones & Laughlin* case. We are not unmindful of the persuasive force of these arguments. Nevertheless, we cannot doubt the power of Congress to legislate with respect to local utilities the disruption of whose service would have a direct effect upon interstate commerce * * *". (Italics ours.)

The Court below concluded (R. 1742) that

> "None of the Labor Board cases decided by the Supreme Court has presented a situation like that at bar."

The Board's decision as to the petitioners

After hearings as to which the facts will be stated hereinafter (see especially pages 26 to 38, *post*), the decision, findings, conclusions and order of the Board (R. 65-130) found against the petitioners as to jurisdiction and on all of the counts of its complaint, except that it dismissed without prejudice (R. 130) so much of the complaint as alleged any violation of Section 8(2) of the Act, which makes it an unfair labor practice "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *." The charge and complaint first made, of "dominating" or contributing "financial or other support" to the Brotherhood. was not sustained and was thereby eliminated from the case (R. 130).

The Board's order required the reinstatement of the six employees with back pay and the doing of various other affirmative acts and things which may best appear from the text of the order (R. 127-130).

The stipulated facts as to the petitioners—their business operations—their customers

Who are the petitioners? What do they do? Who are their customers? The facts from which jurisdiction is to be determined were stipulated (R. 144, 151, 1318-1388):

(1) The petitioners are domestic corporations organized under the laws of the State of New York (R. 1321, 1323-1324), and as public utilities are authorized to do business only within that State (R. 1321-1325; *Transportation Corporations Law of the State of New York, Section 10*).

(2) They neither own nor operate nor control, directly or indirectly, any item of plant or equipment outside the State of New York (R. 1325-1339, 1366-1367). They buy no electric energy, gas or steam from outside the State of New York (R. 1360-1361).

(3) They sell and deliver all of their service exclusively and entirely within the State of New York (R. 1339) to local consumers (R. 72-73).

(4) They sell and deliver their service wholly within the State of New York, to *retail* consumers on demand (R. 1322, 1343-1346, 1373-1387) and to some *wholesale* customers—such as apartment-house owners or office-building owners who buy from the petitioners and sub-meter the service to their several tenants (R. 1373, 1375).

(5) They neither sell, nor offer for sale, nor agree to supply, any service for resale by anyone outside the State of New York (R. 1339).

(6) They buy, *for their own consumption exclusively* in producing local utility service (R. 1364-1372), such consumable goods as oil, coal, copper, service trucks, waste,

paint and varnish, and miscellaneous supplies. Some of these supplies are delivered in New York from points of production or fabrication outside the State of New York; some of them have their origin within the State of New York (R. 1366-1367, 1369, 1371). All deliveries are made by enterprisers other than petitioners (R. 1368-1371), and none of petitioners' employees is engaged in any function of the interstate transportation of such materials (R. 1368).

(7) The petitioners sell and deliver within their respective local franchise territories in the City of New York and Westchester County, their local service to more than 3,500,000 electric and gas customers (R. 1343-1345), the great majority[1] of whom concededly use the service for residential and domestic purposes (see Paragraph 15 of the Petition for Review, admitted by the Board in its Answer; R. 1479, 1692). Other customers use the petitioners' service for light, heat and power in their processes of producing commodities which may be distributed, in part or in whole, outside the State of New York (R. 1375-1387). It is also probable that the petitioners supply service to customers who use the service in their business as sub-jobbers and sub-contractors of others who, in turn, may be engaged in production partly or wholly for out-of-state distribution. The ramifications of the use of their service by others are necessarily far-reaching.

(8) The petitioners supply their service on demand, at delivery points exclusively and entirely within the State of New York, to several consumers which are railroad corporations (R. 1383-1386). Some of these customers are engaged in intra-state and interstate transportation of passengers, freight and express (R. 1383-1386), but such customers purchase and receive, within the State, such quantity and kind of service as they choose, and in some cases at least they have other sources of supply (R. 1383-1386).

[1] See page 18, *post*.

(9) The petitioners sell their service locally to City, State and Federal governments (R. 1375-1377, 1383, 1386-1387), and these agencies of government use it to light the public streets, by-ways, and public buildings, to light and otherwise implement the local establishments of police and fire protection, and to light the way of the postal service and the garages where the delivery equipment of these agencies is repaired and maintained (R. 1375-1377, 1383, 1386-1387).

(10) The petitioners sell their service locally to customers who use it to light harbors (R. 1383, 1387), to accommodate ferries, piers and boat landings (R. 1382-1383, 1387), and to customers who use it in the production of newspapers and other publications (R. 1382) and to customers who generate and distribute ether waves upon which messages may be broadcast by the customers of such customers (R. 1379).

(11) The petitioners supply local customers within their franchise territory, who use the service to light and otherwise implement the operation of airports, news tickers, to transmit quotations of stock and produce exchanges, and to facilitate telephone and telegraph services (R. 1377-1378, 1380-1382).

(12) In the course of generating gas, steam, and electricity the petitioners recover some by-products which have a market value (R. 1372). The petitioners sell and deliver these by-products to manufacturers and jobbers in the City of New York, and credit the proceeds against their production costs (R. 72, 1372-1373).

(13) The customers of the New York Steam Corporation are all retail consumers located within limited areas of the Borough of Manhattan, New York City. Steam is supplied also, within the City of New York, to the Pennsylvania Railroad Company, which the latter uses to operate its

switches in its tunnel under the Hudson River (R. 1350-1351).

(14) The only business of the Petitioner Consolidated Telegraph and Electrical Subway Company is that of leasing space in sub-surface ducts, which it owns and maintains under its contract with the City of New York (R. 1322). It does not generate, transmit or sell any electricity, gas or steam to any one (R. 1322, 1324-1325).

The petitioners' customers predominantly residential and domestic

Of the petitioners' 2,324,800 electric customers (all located within the City of New York and adjacent Westchester County), approximately 1,896,800, or 81 per cent, are *residential* consumers (R. 1373, 1375). Approximately 427,100 are *commercial* consumers (R. 1343-1351, 1373). These commercial consumers consist of the "wholesale" customers mentioned in Paragraph "(4)" above and the many thousands of small factories and like establishments, wholesale and retail shops, restaurants, hotels, churches, schools, charitable institutions and hospitals within the petitioners' respective local franchise territories (R. 1343-1351, 1373).

The proportion of *residential* consumers among the petitioners' gas consumers is even higher than the 81 per cent among the electric users (R. 1344).

Less than two per cent of petitioners' revenues derived from sales to railroads

To railroad customers, the petitioners' total sales of electric energy in 1936 amounted to 376,800,766 kilowatt hours. Petitioners' total sales of electric energy for the same year totalled 5,130,976,460 kilowatt hours. Revenues derived from these sales to railroads amounted to $3,-

112,902.92; total electric revenues for the same year amounted to $180,885,041.65 (R. 1347).

In terms of percentages, 7.34 per cent of the petitioners' total sales of electric energy was to railroads; only 1.72 per cent of their total revenues from sales of electric energy came from the railroads.

The implications of the functional dependence of others as a test of Federal jurisdiction

The foregoing summary is an inclusive statement of the petitioners' relation to interstate and foreign commerce. It shows a relation which, as we shall point out more fully, is duplicated by that of nearly every other local operating utility company in every other community in the United States. It shows a relationship which, in kind and in principle, obtains also with nearly every other intra-state supplier of goods or services to customers who, in turn, are engaged in interstate commerce.

No one will doubt or deny the *functional dependence* of many or most of the petitioners' residential, domestic, and commercial customers upon the continuity of petitioners' operations and service. The same functional dependence is equally immediate and real as to every consumer of utility service in every single town, hamlet and community in the United States which relies upon the electric or gas service supplied by a utility company, whether privately or publicly owned or operated. Customers who themselves engage in interstate commerce or are instrumentalities of interstate commerce create no variant situation. Rare indeed is the local operating utility in any town, hamlet or community of the United States which does not buy from others substantial quantities of materials and supplies which originate at production points outside its State.

The comprehensive regulation of petitioners' business by the State of New York

As fully appears from the record in this case (R. 1324-1325, *et seq.*), each of the petitioners (except Consolidated Telegraph and Electrical Subway Company) is a "public utility company" as defined in Section 2, subdivision 22, of the Public Service Law of the State of New York, *which was made a part of the stipulation as to the jurisdictional facts* (R. 1374). Each of the petitioners which is a "public utility company" is subject to the jurisdiction and regulatory powers of the Public Service Commission of the State. Each of them, except New York Steam Corporation, is also a "gas corporation" or "electric corporation" or "gas and electric corporation" as defined in Section 24 of the Public Service Law of the State. New York Steam Corporation is a "steam corporation" as defined in Section 78 of the Public Service Law.

As public utility corporations, the management and operations of the petitioners are at all times subject to active, continuing, and comprehensive supervision, regulation and inspection by the Public Service Commission as provided in the Public Service Law of the State of New York.

The petitioners which are "gas corporations" or "electric corporations" or "gas and electric corporations" are subject to State regulation with respect to "the manufacture, conveying, transportation and furnishing of gas * * * for light, heat, or power" and with respect to "the generation, furnishing and transmission of electricity for light, heat, or power" (Section 64).

They "shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable," and "all charges" for service shall be no more "than allowed by law or by Order

of the Commission" (Section 65, subd. 1). All rebates and all discriminations in services or charges, and all undue preferences or advantages to persons, localities, or in services rendered, are prohibited (Section 65, subds. 2, 3).

Although the petitioners may establish "classifications of service based upon the quantity used, the time when used, the purpose for which used, the duration of use or upon any other reasonable consideration" and may provide "schedules of just and reasonable graduated rates applicable thereto," no such "classification, schedule, rate or charge shall be lawful unless it shall be filed with and approved by the Commission." Furthermore, "every such classification, rate or charge shall be subject to change, alteration and modification by the Commission." (Section 65, subd. 5).

In furtherance of its "general supervision" of these petitioners, the Commission is empowered to "investigate and ascertain, from time to time" what is "the quality of gas supplied" and the "methods employed * * * in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same." It is vested with further power "to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas or electricity and those employed in the manufacture and distribution thereof." It is empowered "to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property" of these corporations (Section 66, subd. 2). It may by order "fix and change from time to time standards of the purity, illuminating power and heating power * * * of gas" and standards for the measurement thereof and "prescribe from time to time the efficiency of the electric supply system, of the current supplied and of the lamps furnished" and "prescribe from time to time the reasonable

minimum and maximum pressure at which gas shall be delivered" by the petitioners (Section 66, subd. 3).

To assure the continued, faithful performance of any of its foregoing orders by the petitioners, the Commission is empowered "of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering and supplying gas or electricity" and is given access "to all parts of the manufacturing plants owned, used or operated by [for] the manufacture, transmission or distribution of gas or electricity" (Section 66, subd. 3).

The Commission is authorized "in its discretion, to prescribe uniform methods of keeping accounts, records and books * * * forms of accounts, records and memoranda to be kept" and "any other and additional forms of accounts, records and memoranda kept by such corporations shall be subject to examination by the Commission" (Section 66, subd. 4).

The Commission is also empowered to "examine all persons, corporations and municipalities under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business" and if, after hearing, it shall be of opinion that "the rates, charges or classifications or the acts or regulations of any such person, corporation, or municipality are unjust, unreasonable, unjustly discriminatory or unduly preferential * * * the commission shall determine and prescribe * * * the just and reasonable rates, charges and classifications thereafter to be in force for the service to be furnished notwithstanding that a higher or lower rate or charge has heretofore been prescribed by general or special statute, contract, grant, franchise condition, consent or other agreement, and the just and reasonable acts and regulations to be done and observed" (Section 66, subd. 5).

Similarly, if it shall find that "the property, equipment or appliances of any such person, corporation or municipality are unsafe, inefficient or inadequate, the Commission shall determine and prescribe" what is "thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters" (Section 66, subd. 5).

Annual and interim reports are required to be filed with the Commission which shall show in detail the business operations of these petitioners, their capital structures, and changes therein; the officers, and what they are paid; the amount paid as wages to their employees, and "such other facts pertaining to the operation and maintenance of the plant and system, and the affairs of such person or corporation as may be required by the commission" (Section 66, subd. 6).

Many other supervisory powers and duties as to the petitioners are vested in the State Commission. See, for example, Section 66, subd. 9; Sections 67, 69, 69-a, and 70, of the Public Service Law.

Local franchises also frequently stipulate and make further conditions as to how the petitioners' operations shall be conducted (R. 1323-1324).

Although the foregoing summary of the control over petitioners which are "public utility companies" is taken from the provisions of the Public Service Law of the State of New York relating to gas and electric corporations, substantially similar provisions are made respecting the supervision, regulation and inspection of steam corporations in Article 4-a of the same law.

Such is the business of the petitioners over which the State of New York has established a complete and detailed

system of regulation—a system of regulation involving day-by-day inspection of the safety and quality of their service and of the sufficiency of their plants and equipment. This system functions as part and parcel of the health and sanitary services, the police and fire protective services, and the general welfare services, of the City and State of New York.

The New York State Labor Relations Act

In addition to its regulatory system provided in the Public Service Law (and in local franchises), the State of New York has enacted also its own Labor Relations Act to which the petitioners are subject, "unless", as the Court below pointed out, "jurisdiction of the State Labor Relations Board must yield to that of the National Board" (R. 1739).

The New York State Labor Relations Act was enacted May 20, 1937, effective July 1, 1937 (Chapter 443 of the Laws of 1937; Article 20 of the Labor Law), in the "exercise of the police power of the State for the protection of the public welfare, prosperity, health and peace of the people of the State" (Section 700 of the Labor Law).

The New York State Labor Relations Act is all-inclusive of the provisions of the National Act, and was enacted for the purpose of extending to the labor relations of employers engaged in local, intra-state enterprises within the State of New York a supervision similar to that designed by the National Act with respect to employers in interstate or foreign commerce.

State's plenary regulation showing local interest predominant

In the instant case, the National Board and the Court below have held, in effect, that, although the petitioners are engaged only in a local, intra-state business *so situated and conducted as to be completely within the authority and*

powers of the single State, the jurisdiction of the State Board over them must give way to that of the National Board, *even though there is and could be no evidence of any inadequacy of the State Act, or of the administration of the State Board, which is, or might be, prejudicial to interstate or foreign commerce.*

We have set forth the pertinent laws of the State of New York to show how thoroughly its legislature (and local franchises) have provided for the supervision, regulation and inspection of the petitioners; how completely and in detail the State has provided for the protection of petitioners' consumers and employees; how its system of control and protection is implemented by the supervision of its Public Service Commission and the State Labor Relations Board—supervision which involves day-by-day investigations and inspections of the quality of petitioners' service and the efficiency of their plants and operations, and the verification of their just and fair dealings with consumers, and the assurance of their fair practices toward their employees.

This regulatory system has been provided by the State of New York to insure the safety, comfort, convenience, health and welfare of those who may rightfully claim such protection from the sovereign State of New York. It is an integrated and indispensable part of the health and sanitary services, the public welfare services, and the police, fire and safety services, of the State of New York.

No one should be heard to urge that the State of New York has misconceived its powers or functions in providing such protection. The necessities of the homes, hospitals, schools, libraries, transportation agencies, offices, hotels, restaurants, shops, factories and manufacturing establishments within its borders, and of its fire and police departments and public streets, are justly protected. No one realizes more than these petitioners that the quality and efficiency of the service which they supply, the continuity of that serv-

ice, and the just and reasonable rates at which they supply it, do vitally, immediately and directly affect the health, safety and necessities of the people of the City and State of New York, so as to justify the systematic and continuing, protective supervisions which the State has provided.

The combination of facts showing the denial of a full and fair hearing and impartial determination according to the substantial evidence

Aside from the question of jurisdiction, the petitioners maintain that the Board did not accord to them a full and fair hearing and an impartial determination according to the substantial evidence, and that a series of incidents of vital consequence during the hearings and subsequent proceedings, including the very quality of the Board's testimony, reveal clearly and substantially that under the direction of the Trial Examiner by the Board *ex parte* and *in absentia*, the hearing and determination were arbitrary and lacking in due process. Taken in conjunction and cumulatively, as well as separately, these aspects of the hearings and decision are deemed to be so prejudicial as to call for the setting aside of the Board's order (see Questions Presented, "(3)" to "(7)"; Specification of Errors, "(3)" to "(8)".

The Court below expressed pointed criticisms as to several matters; e. g.:

> "This procedure is not one likely to inspire confidence in the impartiality of the proceedings. It results in the findings of fact being made by persons who did not see the witnesses—a matter which may have far reaching consequences in view of the very limited power conferred upon the courts to review the Board's findings of fact. But, though we do not commend such procedure, we cannot say that it has deprived the petitioners of due process of law. * * *" (R. 1743)

"It is not so clear, however, that invalidating the contracts is an appropriate order against the petitioners. * * *" (R. 1745)

"We cannot say that the record is wholly barren of evidence to support the charge that they [the six men] were discriminated against on account of union activities. * * *" (R. 1746)

"Denial of leave to introduce it [additional testimony offered by the Companies through witnesses present in the hearing room] appears to us unreasonable and arbitrary. However, the petitioners have not applied to this Court for the taking of additional evidence, as they might under Section 10(e)." (R. 1747)

Questions of the essential fairness or unfairness of *quasi*-judicial proceedings, going as they do to the very heart of the judicial function, may be determined best by examining thoroughly the record of the proceedings. To aid, we summarize the salient facts, with references to the transcript:

The taking of evidence before the Trial Examiner began on June 3rd (R. 133, 144, 151). Hearings were continued on June 10, 11, 14, 15, 16, 17, 23 and 24, 1937, and were concluded on July 6, 1937. Some twenty-eight witnesses were called and examined in behalf of the Board, and twenty exhibits were received in its behalf, consisting largely of documents produced by the Companies at the Board's request (see list of exhibits, pages v to xi).

The Board's *ex parte* direction that the Trial Examiner refuse to hear witnesses present in the hearing-room

On June 23rd, as on other days, the Companies produced at the hearing-room numerous witnesses asked for by the Board and had a larger number subject to call when the Board wanted them, in lieu of formal subpoena. Late in the afternoon of that day (R. 1102), counsel for the Board indicated for the first time that "we could get the remaining

witnesses here tomorrow and we probably would be in a position to close tomorrow" (R. 1102). On that day and the following day, a large number of witnesses who had been requested by the Board were not called but were excused (R. 1188); and on June 24th the Board's case was "completed, aside from the one matter in respect to which it is kept open" (R. 1186). Counsel for the then respondents said frankly: "no one on respondent's side, was aware until yesterday afternoon that this proceeding was likely to terminate today or this week" (R. 1188). It was agreed that the making of motions by either side, "addressed to any part of the record", might be left open "until we have had a chance to examine this rather voluminous record" (R. 1186). A substantial amount of further documentary evidence which the Board wished to offer was also to be prepared by the petitioners (R. 1184-1185) and adduced on the adjourned date, as was done (R. 1195).

Because of the unexpected closing and the absence of two essential witnesses, as well as on other substantial grounds stated (R. 1186-1193), counsel for the Companies asked for a recess until July 6th, at which time there should take place the completion of the Board's case, the making of motions by both sides, and the presentation of the testimony for the Companies, including that of Messrs. Carlisle and Dean, who by reason of absence could not be available sooner (R. 1188, 1192). It was stated that "the direct examination of all witnesses in behalf of the respondents would not occupy more than a day" (R. 1192).

The Companies' request was immediately referred by the Trial Examiner for decision through "telephone conference" (in which counsel for the Companies had no part), by the Board or some member thereof in Washington (see R. 1187, fol. 3561; 1189, fols. 3567-3568; 1191, fol. 3573). No member of the Board had been present at any of the hearings or had heard or seen any of the witnesses. The hearings had been conducted by the Trial Examiner and by the regional attorney for the Board, who alone could be familiar with the testimony and the situation. Regional

counsel for the Board did not oppose the request that the Companies' case, as well as his own, be held over until July 6th. He said:

"I have nothing to say" (R. 1190).

Nevertheless in obedience to his instructions from persons who had not been present at any hearing, the Trial Examiner limited the adjourned hearing (on July 6th) to the completion of the Board's case, the making of motions, and the taking of the testimony of only one witness (Mr. Carlisle) for the Companies (R. 1192-1193), although they were told that they might petition the Board for permission to call more than the one witness (R. 1192).

The petitioners took up the matter with the Board (R. 1309, 1545), and the record contains the full correspondence between the secretary of the Board and petitioners' counsel (see R. 1545-1553). The correspondence tells the story, and shows also that the Board or its secretary greatly misapprehended the situation before the Trial Examiner (see R. 1550 and 1552).

The Trial Examiner had fixed no *intermediate* date for taking the testimony of Mr. Dean or any other witnesses, and the matter went over until July 6th by general assent (R. 1192, 1311). There was no direction that testimony other than that of Mr. Carlisle should be taken at any other time. On July 6th, counsel for the Board completed his case with further documentary evidence (R. 1195), and made an omnibus motion to amend further his complaint (R. 1196), of which motion he had given no notice. This motion once more to amend the complaint was granted (R. 1196-1197). Counsel for the Companies then made various motions (R. 1198-1201), and counsel for the Board offered his last exhibit for the Board (R. 1202; Exhibit No. 20).

The testimony of Mr. Carlisle, who was in Europe at the time of the recess on June 24th, and the testimony of Mr. Harold Dean, who was out of the State on June 24th

(R. 1188) were then permitted and taken. Correspondence with the Board as to further testimony was received (R. 1309; Exhibits Nos. 25 and 25-A). When counsel for the Companies called a further witness, the Trial Examiner declined to let him testify. The Trial Examiner said (R. 1309):

> "In view of the ruling of the Board, I am afraid that——".

Counsel for the Companies pointed out that the Board had completed its case only that morning, and that the matter was substantially affected by the further amendment of the complaint, allowed without notice and only that morning (R. 1196, 1312). He pointed out also that the proffered testimony of two witnesses present in the hearing-room related to the discharge of an employee not named in the charge or complaint (R. 1313). Nevertheless, the Trial Examiner felt bound to adhere to his *ex parte* instructions received by him from the Board in Washington, D. C.; he would not even accept a suggestion by the Companies that the testimony be taken, without prejudice, so it would be before the Board and any reviewing Court (R. 1312). He said:

> "I am afraid I consider myself bound by the decision of the Board in respect to eliciting testimony." (R. 1312).

So an offer of proof was made (R. 1314-1315), as to what would be the testimony of the two witnesses present in the hearing-room.

As to the above matters, the Court below said (R. 1747):

> "The Board unexpectedly completed its proof on June 24, 1937. Counsel for the petitioners was unready to go on and obtained a continuance in order that Messrs. Carlisle and Dean, who were absent from the city, might testify on July 6th. The Examiner and the Board (by letter) declined to let any other witnesses testify on that date. Counsel offered two of Solosy's supervisors to testify to the reasons for his discharge and to the fact that the men who were

retained in preference to him were better educated and better trained. These witnesses were at hand, their testimony would have been short and would have entailed no appreciable delay in closing the hearings. It was vital testimony on the issue of the petitioners' motive in discharging him. Denial of leave to introduce it appears to us unreasonable and arbitrary * * *".

The long delay of determination following such refusal to take testimony

Although the case was thus closed on July 6th under apparent pressure as to time, the Board took no action until nearly three months later (September 29th), when it transferred the case from the Trial Examiner to itself; and the Board waited more than a month more, more than four months in all, before deciding the case,—this after refusing to hear testimony which would have taken a few hours.

The foregoing course of events by which the petitioners were prevented from presenting substantial elements of their case in refutation of the Board's testimony took place by virtue of directions given to the Trial Examiner by Board members or employees who had not been present, had not heard or seen any of the witnesses, and had no first-hand knowledge of the status of the trial.

The Board's transfer of the proceedings away from the Trial Examiner who heard the evidence

A further specification in support of the petitioners' contention that a proper hearing and determination were denied by the Board, is furnished by the following facts, in conjunction with the others stated:

On September 29, 1937, nearly three months after closing the hearings, the Board issued its order that "this proceeding be transferred to *and continued before the Board*" (R. 64). The petitioners had no prior notice of this order or

opportunity to be heard as to it. A copy of it, when made, was mailed to the petitioners (R. 1502-1503).

The petitioners never received further information from the Board, or otherwise, as to the status of the proceedings, until the Board published its decision, findings, conclusions and order against the petitioners under date of November 10, 1937 (R. 65-130).

So there was no intermediate report nor findings by the only person who saw the witnesses and heard their testimony, and the petitioners were given no opportunity to be heard by and before the Board, as to any proposed findings or any intermediate report as contemplated by the Board's Rules, or otherwise.

In the Board's brief in opposition to the petition for a writ of certiorari in this case, reference to the transfer and continuance of the proceedings before the Board is followed by this single comment (page 7): "No oral argument was had, *none having been requested by petitioners.*" The petitioners' *first step* was to ask the Board for an opportunity to be heard "directly by the Board" (R. 19-21). This was preliminarily denied by the Board (R. 38-39), and never at any time granted. Moreover, we read Section 37 of the Board's Rules as applying to a transferred proceeding the same provision for oral argument as of right as is recognized in Section 29 as to proceedings before a Trial Examiner.

A few days after the case before the Trial Examiner was closed, counsel for the petitioners submitted to him a brief, to aid his preparation of findings (R. 71, 1316). If he prepared any findings, the Board never made them public. If it is to be assumed that this memorandum came to the attention of the Board, we think that the submission of such

a memorandum to the Trial Examiner was no substitute for the requested opportunity to be heard by and before the Board and no substitute for the opportunity for oral argument provided by the Board's Rules.

The invalidation of the contracts without notice or statement of any claim against them

On April 20, 1937 (prior to the charge filed by the CIO affiliate on May 5th and the complaint served on May 12th), the Companies announced to their employees and to the public press their agreement with Mr. Tracy, President of the International Brotherhood of Electrical Workers, to enter into collective bargaining contracts with the Brotherhood in behalf of those employees who were members of the Brotherhood (R. 1203-1211, 1393).

Pursuant to this agreement, the petitioners severally entered into collective bargaining contracts with the Brotherhood. These contracts were completed and executed during the period between May 28, 1937, and June 16, 1937 (R. 100). At the request of the Board (R. 868-870), copies of each of these contracts were produced and placed in evidence (see list of exhibits, R. vi and x).

These contracts provide for (to quote from the Consolidated Edison Company contract applicable to gas workers, which is substantially identical with the other contracts):

> "* * * rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Consolidated Company who are members of the Brotherhood and enable the Consolidated Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory" (R. 1419-1420).

These contracts provide further that the Companies recognize the Brotherhood as the collective bargaining agency *"for those employees who are members of the Brotherhood"* (R. 1420); that the Companies shall not interfere with the right of their employees to join the Brotherhood; and that they shall practice no discrimination, restraint or coercion against any employee because of his membership in the Brotherhood. The Brotherhood, in turn, stipulates "for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Consolidated Company time or property" (R. 1420).

The Court below found (R. 1745), *and the undisputed evidence at the hearings showed* (R. 1212, 1418), *that the Brotherhood membership at the end of June included 30,473 out of 38,152 eligible employees of the petitioners (80 per cent).*

The Board either concealed its purpose or annulled the contracts as an after-thought

In order to justify the vacating of the Board's order as to these contracts, it is not necessary to determine whether the Board's course of action was the product of a deliberate purpose and design *not to reveal* its claims and intentions with respect to the contracts, or whether the determination by the Board to void them was *an after-thought conceived and executed without notice or opportunity of hearing* to the petitioners, and, of course, without opportunity to make argument or to submit a brief upon the claims and contentions of the Board respecting those contracts. The Board may interpret its action on either basis; in either event, there was not due process of law.

To us it seems probable that the annulment of the contracts was an *after-thought* and was not disclosed because it was not in mind. In any event, neither as first served nor

as at any time amended did the complaint state any issue as to, or even mention, these contracts, although the complaint was last amended on July 6th and the last contract had been executed on June 16th. Neither the Trial Examiner nor counsel for the Board ever stated any issue against the validity of the contracts or gave any notice that such a question was to be determined by the Board. Counsel for the Board several times said that the complaint was not "directed against the Brotherhood" (R. 279-285) and that "no issue of representation [is] involved in this proceeding" (R. 279, 525-526).

The Court below was under a misapprehension that "the contracts were introduced by the petitioners in support of a contention that the issue of coercion of employees was thereby rendered moot" (R. 1745). As shown by citations of the record on pages 8 and 9 and 33 to 35; *ante*, the contracts were produced and put in evidence only at the request of counsel for the Board; and it was only after counsel for the Board had closed his case and had obtained from the Board on the last day (R. 1196) an omnibus further amendment of the complaint without previous notice and over objections, that the petitioners moved to amend their answer and set up as a separate defense that the contracts in force with Local Unions representing much more than a majority of the employees (contracts in no way attacked in the complaint or on the hearings) had rendered *moot* the charges of unfair labor practices involving interference with and coercion of petitioners' employees (R. 60, 1200-1201).

The invalidating of the contracts tended to further, not prevent, industrial strife

The Board made no finding, and there was no evidence to support a finding, that continued observance of these contracts endangered the continuity of petitioners' operations or service to their customers, or that they had effected,

or were likely to effect, any labor dispute burdening or obstructing commerce.

These contracts with a substantial majority (80 per cent) of the petitioners' employees (R. 1418) were and are of vital importance to the petitioners, who are charged by the State and City of New York with responsibility to render *continuous* service to all of their customers, of whom more than 80 per cent are residential and domestic customers. Each of these contracts stipulates against resort to strikes or lock-outs, provides for the arbitration of all disputes which cannot otherwise be settled, and provides for such arbitration without cessation of work or employment (R. 139, 1428-1429), thereby giving a substantial practical assurance of the maintenance of the uninterrupted operations and service of the petitioners. It is a matter of public knowledge in the City of New York, and is shown by the papers in the Court below, that these arbitration provisions were invoked to settle a labor controversy involving the laying-off of several hundred men for lack of work, and that the dispute was thereby ended without any disturbance of service.[1]

The Board contends that its assumption of jurisdiction is essential or appropriate to prevent possible labor disputes, among the petitioners' employees, which might disrupt the continuity of petitioners' operations and so burden commerce. Yet the Board enters upon its assumed jurisdiction and at the same time undertakes to nullify contracts under which 30,000 employees (80 per cent of the total eligibles) have bound themselves to arbitrate all disputes and to stay at work pending arbitration. The Board has made no finding that if these 30,000 employees remained at work under these contracts, any labor dispute involving a rela-

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[1] *The New York Times*, December 16, 1937.

tively few employees[1] could suspend the petitioners' service. If assurance were needed against such an improbability, the best assurance which the petitioners and the people of the City of New York could have that the petitioners' service will not be interfered with by labor controversies, is these contracts which the Board would nullify.

The Brotherhood in effect "dis-established" by the Board's order

Nowhere in the complaint as first served, or as amended from time to time, was any question of *representation* under Section 9(c) of the Act put in issue. Indeed, counsel for the Board was explicit at the hearings in stating that no question of representation was involved in the proceedings (R. 279, 525-526), and that the complaint was not directed against the Brotherhood (R. 279-285). Nevertheless, for all practical purposes, the Brotherhood as well as its contracts were dis-established, by the order here under review.

The Board did this in disregard of the fact that it found that the petitioners had not offended Section 8(2) of the Act and therefore dismissed so much of the complaint (Par. 22) as charged that they had dominated, interfered with, or contributed support to, the Brotherhood (R. 130). As the Court below observed, this finding made the case unlike *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, in which the labor union was found to have been reared by the employer as a "company union." We point out also the conclusion of the Court below that, by reason of the other provisions of the Board's order, the invalidation of these contracts was *unnecessary* to give the petitioners' employees *"complete freedom to join United in preference to the Brotherhood or to join neither"* (R. 1746).

The record here shows, we submit, that in these respects, as in the others already stated, the Board acted with ap-

[1] The highest estimate that any of the Board's witnesses made as to the number of members of the United (the CIO affiliate) or its predecessor was related only to the predecessor and claimed at one time a maximum of about 1200 members (R. 390, 500-502), which would be about 3 per cent of the total eligibles. The undisputed testimony (R. 1418) was that the Brotherhood had, at the time of trial, 80 per cent of the eligibles.

parently punitive purpose and partiality against the petitioners and the Brotherhood, and that its order unnecessarily and improvidently confiscates their contracts, which were lawfully conceived and accomplished in furtherance of a very substantial public interest; namely, the continuity of their supply of service.

The absence of substantial evidence to sustain findings

As we shall show hereinafter, on such salient points as space permits, the Board arbitrarily disregarded the *substantial* evidence to the contrary of its findings on several issues, and made findings which are so insufficiently supported by evidence of any substantial probative value as to be arbitrary and contrary to law.

We contend that the Court below in effect abdicated or unduly declined its duty and power of judicial review, because of an erroneous assumption that it should sustain the findings of the Board unless "the record is wholly barren of evidence to support the charge * * *" (R. 1746).

The decision of the Court below

The opinion of the Circuit Court of Appeals speaks best for itself; it has been summarized sufficiently under the several headings hereinabove.

On the question of jurisdiction, it seems warranted to say that the Court below found this cause unlike, and uncontrolled by, any which this Court has decided (R. 1742). On the questions of due process, the Court below commented most unfavorably upon various elements of the Board's procedure and course of action (see R. 1743, 1747), but saw fit to say, apparently with reluctance, that none of these matters "deprived the petitioners of due process of law" (R. 1743).

Specification of Errors

(1) The Circuit Court of Appeals erroneously decided that the Act authorizes the Board to exercise its jurisdiction over the petitioners and over the matters complained of by the Board.

(2) The Court below erroneously decided that the provisions of the Act may be validly enforced against the petitioners under the Constitution.

(3) The Court below erroneously decided that the procedure whereby the case was transferred to the Board without any findings of fact or conclusions of law being made by the Trial Examiner who had heard the witnesses, and whereby the decision by the Board was made without notice or opportunity for the petitioners to be heard by the Board, or otherwise, with respect to any findings of fact or conclusions of law of the Board, was in compliance with the Rules of the Board and did not deny to the petitioners due process of law.

(4) The Court below erroneously decided that the rulings by the Trial Examiner and by the Board, refusing to hear evidence sought to be introduced in behalf of the petitioners, were valid and did not deny to the petitioners due process of law.

(5) The Court below erroneously decided that the order of the Board requiring the petitioners to cease and desist from giving any effect to their collective bargaining contracts with the Brotherhood is valid and does not deny to the petitioners due process of law.

(6) The Court below erroneously decided that the findings of fact of the Board were validly made and that they were sufficiently sustained by proper evidence, whereas the purported findings of fact upon which the Board asserted

and exercised jurisdiction were a series of assumptions and hypotheses unsupported by evidence.

(7) The Court below erroneously decided that the conclusions of law of the Board are valid.

(8) The Court below erred in holding that the National Act, as construed, applied and administered by the Board in this case, complies with the Fifth and Tenth Amendments to the Constitution of the United States.

SUMMARY OF ARGUMENT

1

As to Jurisdiction

The petitioners' operations, relations and labor practices are exclusively and entirely intra-state. The furnishing of gas, electricity or steam to local inhabitants concerns primarily and predominantly the health, safety, comfort, convenience and general welfare of the millions of people who reside and do business day-by-day within the City of New York and Westchester County. The petitioners' operations are such in their characteristics that, carried on wholly within a single State and traditionally subjected to plenary jurisdiction of the State, they are appropriately regulated and supervised as local concerns affected with a local public interest.

Brush v. *Commissioner*, 300 U. S. 352, 371;
Pacific Gas & Electric Co. v. *Sacramento Municipal Utility Dist.*, 92 Fed. (2nd) 365, 369; certiorari denied, 303 U. S. 640;
Southern Natural Gas Corporation v. *Alabama*, 301 U. S. 148, 154;
Missouri v. *Kansas Natural Gas Company*, 265 U. S. 298.

Because of the extent and immediacy of the functional dependence of the City of New York and Westchester County and the millions of their inhabitants upon the petitioners' services, the *local* interest in petitioners' uninterrupted supply of their services is, and should be recognized and preserved as, *predominant and paramount*. The petitioners' operations and labor relations are predominantly local rather than National because of the directness and immediacy of their relation to the health, safety, comfort, and convenience and general welfare of the people who live, reside and do business in the City and State of New York, and because of the dependence of the City and State of New York thereon in exercising their police powers for the main-

tenance of order and public convenience and the protection of the safety and well-being of their inhabitants.

Such National interest as may attend such local operations, relations and labor practices and relate to the prevention or removal of burdens or obstructions to "commerce", is essentially subordinate and requires no separate identification so as to serve as a basis for Federal regulation. The State and City of New York should accordingly continue to have the primary undivided power to regulate the petitioners' labor relations and practices, along with the other phases of petitioners' operations.

In view of this paramount local interest in petitioners' service and operations, and in view of the all-inclusive measures which are in effect under the laws of the State of New York, including the New York State Labor Relations Act applicable to concerns, like the petitioners, who are subject fully to the laws of the State, the exercise of Federal authority as here attempted by the Board is not "essential or appropriate" but is definitely contrary to the mandate of this Court that the exercise of Federal power under the commerce clause shall be exercised only upon "suitable regard to the principle that whenever the Federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the Federal power must clearly appear," and must be supported by adequate evidence and findings of appropriate definiteness.

Florida v. *United States*, 282 U. S. 194, 211, 212;
Cf. *Pennsylvania* v. *Williams*, 294 U. S. 176;
Hopkins Savings Association v. *Cleary*, 296 U. S. 315.

The record here shows no compliance by the Board with the requirements of the principles of *Florida* v. *United States*. Clearly there was no evidence, and there is not one of the required findings, to justify the Board's attempted exclusion of State authority by extension of Federal jurisdiction over petitioners who otherwise are within the domain of State power.

There has been no burdening or obstruction of commerce by any interruption of petitioners' services because of any labor controversy. There is no evidence that any such interruption is likely from such a cause, or that a labor controversy involving petitioners' employees would be less likely under the Board's jurisdiction or would not be as effectively dealt with by the State Board. There is no finding of any inadequacy of the State jurisdiction and regulation of the petitioners' labor practices. In short, the grounds on which the Board asserted *need* for its jurisdiction were no more than a series of unsupported assumptions arising from wishful thinking on its part.

The various rulings of this Court under the Act are not decisive or controlling here. In those cases, the employer was itself engaged actively in interstate commerce, and the employer's business was organized and conducted predominantly as an enterprise in interstate commerce, beyond full control in all aspects by a single State. In none of the cases decided by this Court was the employer a local operating public utility affected predominantly with a local public interest and already subject to plenary jurisdiction by the State and locality, including regulation as to its labor practices. In none of the cases decided by this Court were a State Labor Relations Act and State Labor Relations Board in existence and functioning, as here; and, to reiterate, there is no finding here that the State Act and State Board have been, are, or might be, *inadequate* to protect the interstate commerce carried on by some of petitioners' customers from being burdened or obstructed by a suspension of petitioners' service because of a labor controversy with some of petitioners' employees.

Here is fairly the question whether "the authority of the Federal government" shall be

> "pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce 'among the several States' and the internal concerns of a State."
>
> *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 30.

The principles declared in *Florida* v. *United States*, *supra*, taken in conjunction with those stated in the *Brush* case and other recent decisions, seem to us to call for a denial of the jurisdiction here attempted by the Board.

2

AS TO THE BOARD'S DENIAL OF A FULL AND FAIR HEARING AND AN IMPARTIAL DETERMINATION ACCORDING TO THE SUBSTANTIAL EVIDENCE.

Taken together and given cumulative effect—this being the way such matters were experienced by the petitioners—various incidents of the proceedings in this case show unmistakably the withholding of a fair, full hearing and an impartial determination. Even if they stood alone, each of the incidents should be held, we believe, to constitute *pro tanto* a withholding of due process of law; in the aggregate and taken together, the intent and effects of the Board's course of action appear therefrom so clearly as to call for setting aside its findings and conclusions. Due process of law does not permit *all* of these things to be done to employers *in one proceeding*. We here specify *inter alia:*

(a) The arbitrary refusal and failure of the Board to give the petitioners an opportunity to be heard directly by the Board itself (see page 8, *ante*), which rendered the Board's order *ultra vires* Section 10 (b) of the Act.

National Labor Relations Board v. *Hopwood Retinning Company*, 97 Fed. (2nd) 97, 101;
Interstate Commerce Commission v. *Northern Pacific Railway Company*, 216 U. S. 538.

(b) The refusal of the Trial Examiner on June 24th, under *ex parte* instructions telephoned to him by some member or subordinate of the Board, to adjourn the hearing to permit any witness other than Mr. Carlisle to testify for the petitioners (see pages

27 to 29, *ante*); and the refusal of the Trial Examiner, again under *ex parte* instructions from the Board, to permit more than two witnesses (Messrs. Carlisle and Dean) to testify on July 6th, the closing day (see pages 29 to 31, *ante*), thereby refusing to hear witnesses present in the hearing-room; such "remote control" being exercised despite the fact that no member of the Board had attended any hearing or heard any witness or gained an accurate comprehension of what the situation was—and notwithstanding the fact that the Board had not completed its evidence until on that day and had *then* asked for and obtained without notice a blanket further amendment of its complaint (see pages 10 and 30, *ante*).

(c) The action of the Board in invalidating by its order the petitioners' contracts with the Brotherhood, although in neither the charge, the complaint, the numerous amendments of the complaint, nor any statement of the Trial Examiner or of counsel for the Board, was any issue as to the validity of the contracts raised or indicated. The petitioners had pleaded the existence of these contracts (R. 58); the contracts had been produced at the request of the Board (R. 868-871) and placed in evidence; but the Board had never raised or indicated any issue as to their validity, and was guilty of either intentional concealment of its claims as to them or of annulling the contracts upon an unlitigated issue brought into the case as an afterthought (see pages 33 to 37, *ante*).

Morgan v. *United States*, 304 U. S. 1;
National Labor Relations Board v. *Greyhound Lines*, 303 U. S. 261;
Shields v. *Barrow*, 17 How. 129, 139.

The case at bar, as to the contracts of the American Federation of Labor affiliate, is wholly different

from that before this Court in *National Labor Relations Board* v. *Greyhound Lines*, 303 U. S. 261, 270. There a "company union" was "dis-established" because it was "so organized that it is incapable of functioning as a bargaining representative of employees."

Here the contracts were with a recognized International Union. The Board repeatedly disavowed, on the hearings, any issue as to representation (R. 279, 525-526), any attack upon the Brotherhood (R. 285), or any challenge of the status of the Brotherhood as a bargaining agency (R. 279, 525-526).

The "charge" and the complaint alleged violation of Section 8(2) of the Act by the petitioners as to the Brotherhood (R. 4, 15), but the evidence in no way sustained this claim. The Board dismissed here the charge of "dominating" and "contributing financial and other support to the International Brotherhood" (R. 130), which the Court below deemed to distinguish the case from the *Greyhound Lines* decision (R. 1745).

(d) The Board proceeded to a final determination after it had "transferred" the proceedings away from the Trial Examiner and unto itself without notice and without having any findings made by the Trial Examiner who alone heard the testimony, and without affording the petitioners any opportunity to appear before it or be apprised of the Board's contentions, although the Companies had at the outset demanded a hearing before the Board itself (R. 19-21) and although the Board's own Rules (Sections 29 and 37) apparently required that when a case is "transferred" from the Trial Examiner and continued before the Board before he makes and files an intermediate report, a suitable opportunity for oral argu-

ment before the Board shall be allowed (see pages 31 to 33, *ante*).

National Labor Board v. *Hopwood Retinning Company, supra;*
Morgan v. *United States, supra.*

(e) The course of events as to the Board's repeated amendments of its complaint, without proper notice and without giving the petitioners an opportunity to meet the issues raised (see pages 6 and 7, *ante*).

(f) The Board disregarded the *substantial* evidence and based its findings on remote, vague and biased hearsay and rumor, to such an extent as further to confirm the inferences arising from the other matters above indicated (see Point III, *post*).

This course of action by the Board in the conduct of the proceedings constituted, in the aggregate and cumulatively, a denial of a full and impartial hearing and fair adjudication—a denial of the "inexorable safeguard which the due process clause assures".

St. Joseph Stock Yards Co. v. *United States,* 298 U. S. 38, 73;
Morgan v. *United States,* 298 U. S. 468; id., 304 U. S. 1.

3

AS TO THE COURT'S STANDARD OR CRITERION OF REVIEW OF IMPORTANT FINDINGS OF FACT BY THE BOARD

As we shall show in detail under Point III, *post,* the Court below erred, we think, in its standard of judicial scrutiny or non-scrutiny of the Board's findings. It in effect *abdicated* its judicial functions in this field, to the

extreme of sustaining the Board's findings unless the record "*is wholly barren of evidence*" to support them. Such a test does not afford a judicial review of any substantial quality or efficacy.

> *Washington Coach Company* v. *National Labor Relations Board*, 301 U. S. 142, 143;
> *Pennsylvania Railroad Company* v. *Chamberlain*, 288 U. S. 333, 339-344;
> *National Labor Relations Board* v. *Thompson Products*, 97 Fed. (2nd) 13, 15.

The Court applied this standard specifically (R. 1746) in sustaining the Board's findings relating to the petitioners' alleged reasons for laying off six employees whom the complaint charged had been discharged for their labor organization membership and activities contrary to Section 8(3) of the Act. Undoubtedly the same erroneous and inadequate concept of its power and duty to search the record to see whether or not there was *substantial supporting evidence* for the Board's findings, pervaded the Court's action in sustaining other findings of the Board.

Under a more adequate standard of judicial scrutiny (which, we submit, even the Act requires of the Court), these findings of the Board and the order of the Board based thereon should have been, and should now be, set aside for want of any substantial evidence to support them.

Other Circuits have held to the requirement of *substantial* evidence to support the findings of the Board.

> *National Labor Relations Board* v. *Bell Oil & Gas Company*, (C. C. A. 5th); decided July 29, 1938; L. R. R. August 8, 1938, pages 24, 26;
> *Peninsular & Occidental Steamship Company* v. *National Labor Relations Board* (C. C. A. 5th); decided July 29, 1938; L. R. R. August 8, 1938, page 28;

National Labor Relations Board v. *A. S. Abell Company* (C. C. A. 4th); 97 Fed. (2nd) 958;
Standard Lime & Stone Company v. *National Labor Relations Board*, 97 Fed. (2nd) 531, 536 (C. C. A. 4th);
National Labor Relations Board v. *Sands Manufacturing Company*, 96 Fed. (2nd) 721, 726 (C. C. A. 6th);
Appalachian Electric Power Company v. *National Labor Relations Board*, 93 Fed. (2nd) 985, 989 (C. C. A. 4th).

Subsequent to its decision in the instant case, the Circuit Court of Appeals for the Second Circuit has apparently adopted the requirement of *substantial* evidence, which it refused or failed to apply here.

Ballston-Stillwater Knitting Company, Inc. v. *National Labor Relations Board* (C. C. A. 2nd); decided August 1, 1938; L. R. R. August 15, 1938, page 23.

In the *Ballston* case, the Circuit Court of Appeals for the Second Circuit, by applying the judicial yardstick of search for *substantial* evidence, set aside findings by the Board.

ARGUMENT

POINT I

The Board has not shown that its assumption of jurisdiction over the petitioners as to the matters here complained of is essential or appropriate or that such jurisdiction has been or could be conferred upon the Board under existing constitutional provisions and concepts

We are in accord with the Court below that "None of the Labor Board cases decided by the Supreme Court has presented a situation like that at bar" (R. 1742) and that "these cases [lately decided under the Act] are not decisive of the case at bar" (R. 1742). Decisions such as that in the *Jones & Laughlin* case seem to us to be distinguishable and inapplicable, both on the facts and the underlying principles; and, with all deference, we shall hope to show the lack of basis for the view of the Court below that "the principles they have announced point to the conclusion we have reached" (R. 1743).

Indeed, we are clear that to uphold the jurisdiction asserted here by the Board would not only disregard the plain admonitions of the *Jones & Laughlin* decision but also would require substantial modification of the ruling of this Court, under the commerce clause, in *Florida* v. *United States*, 282 U. S. 194, 211, 212, and of other recent decisions hereinafter discussed.

Underlying basis of our argument

It may be helpful if we first state our concept of the problem implicit in this jurisdictional issue. We recognize that nothing in the text of the Constitution or in the decided cases confers this jurisdiction explicitly or with-

holds it beyond peradventure. We find ready no "mathematical or rigid formulas" by which it may or should be resolved. We are aware, however, that, under the Act, "the subject of Federal power is still 'commerce', and not all commerce but commerce with foreign nations and among the several States", and that what is interstate commerce (or what is intra-state commerce) should be approached as "a practical conception" with a view to effectuating practicably the purposes of public control within the frame-work of our Federal form of government.

We further appreciate that whether or not Federal control over activities long regarded as local has now become "essential or appropriate", involves considerations "of degree", as we understand that term, and that the determination of what are "direct" and "indirect" "effects upon interstate commerce" within what may be accepted tests of Federal authority under the commerce clause, should not be made in an "intellectual vacuum" and in disregard of the structure and scope of present-day enterprise nor, on the other hand, in disregard or frustration of the protective regulatory measures taken by the States as well as by the Congress. And by a traditional use of the expressions "direct" and "indirect interference" with commerce, it has at times, at least, seemed that "we are doing little more than using labels to describe a result rather than any trustworthy formula by which it is reached."

We do not challenge that the question whether or not particular activities do affect interstate commerce in such a close and intimate fashion as to give rise to a need and basis for Federal control, and so to lie within authority which might be conferred upon the Board, has been left, by the statute as interpreted by the decisions thus far, to be determined "as individual cases arise". And if, as the late Mr. Justice Cardozo said in the *Carter* case (298 U. S. 238, 328), the power of the Congress under the commerce clause is "as broad as the need that evokes it," surely a Federal board

may not broaden its powers by merely *asserting and assuming*, not establishing, the need.

Upon the record here, we maintain that the Board's assumption of jurisdiction should be held to be unauthorized by the Act and repugnant to the Constitution.

Florida v. *United States*, *supra*.

Distinguishing aspects of this case.

The record in this case fairly shows:

(1) That the petitioners' operations, transactions and relations, over which the Board seeks to establish its authority, are primarily and predominantly related to the local policy and local welfare involved in their service of residential and domestic consumers, and are at all times within the domain of existing, all-inclusive State jurisdiction and regulation, including their labor relations and practices, and are not, by reason of their nature or territorial scope or otherwise, beyond the power of the one State to supervise adequately.

(2) That the petitioners' operations, transactions and labor relations are necessarily and properly considered to be exclusively within the jurisdiction of the State of New York because the directness and imminency of their relation to the health, safety, comfort, convenience and general welfare of the millions of people who reside and do business day-by-day in the City of New York, are such as subordinate entirely any of their aspects which might be separately identified as of National public interest for any useful purpose of Federal regulation.

(3) That in terms of human, social or even economic welfare, *desiderata* concerning the "free flow of commerce" would pale indeed in comparison with the problems of health, sanitation, safety and convenience of its own inhabitants, if the petitioners' services were to be disrupted

and New York City were to be without light and power for its millions of homes, and thousands of office buildings, hospitals, schools, libraries, hotels, restaurants, theatres, shops, its police and fire departments, and the public streets.

(4) That the predominance of local rather than National interest may be further appreciated by considering these petitioners and their operations and services in comparison with those of the local water service of the City of New York, concerning which this Court has very recently pointed out that

> "Without such a supply, public schools, public sewers so necessary to preserve health, fire departments, street sprinkling and cleaning, public buildings, parks, playgrounds, and public baths, could not exist. And this is equivalent, in a very real sense, to saying that the city itself would then disappear. * * * Moreover, the health and comfort of the city's population of 7,000,000 souls, and in some degree their very existence, are dependent upon an adequate supply of pure and wholesome water. * * *"
>
> *Brush* v. *Commissioner*, 300 U. S. 352, 370-371.

The picture is essentially the same with respect to the petitioners' services, except that there should be portrayed also the vital dependency of this very water supply service upon the petitioners' supply of electric power. See, also:

> *Pacific Gas & Electric Co.* v. *Sacramento Municipal Utility District*, 92 Fed. (2nd) 365, 369; certiorari denied 303 U. S. 640.

(5) That just as the State of New York should have the primary, undivided, police power to handle any untoward interruption of the petitioners' services should it ever become a reality, so it should have the primary, undivided power to regulate and supervise all of the petitioners' operations, transactions and relations with a view to preventing any such catastrophe.

(6) That there has been and could be no finding and no showing by the Board in this case that the regulatory measures taken by the State and City of New York in furtherance of the protection of their own residents in the City of New York and Westchester County, are inadequate or suitable, or that they have worked or will work otherwise than to facilitate and protect to the fullest extent possible under any National laws the interests of interstate and foreign commerce.

(7) That by reason of these considerations, the attempted assumption of Federal jurisdiction by the Board, over the operations, transactions and relations of the petitioners which are now subject to adequate State control, including the New York State Labor Relations Act, is not necessary or appropriate and transgresses our constitutional balance of State and Federal powers.

The Board has shown no necessity for its assumption of jurisdiction

What we actually have in this case, and essentially all we have in this case, are a charge, complaint, proceedings, findings, etc., as to matters which involve only intra-state employers and wholly intra-state operations and which can be just as adequately and thoroughly dealt with by the State Board as by the National Board. There is and could be no finding that the action of the State Board would protect and safeguard interstate commerce any less adequately and thoroughly than would that of the National Board.

The National Board has not found any inadequacy of the State's regulation of the petitioners' operations and relations or of matters such as those of which the Board complains. The Board has professed to find that the labor practices alleged in the complaint might cause a strike and that a strike might interfere with interstate commerce *conducted by others than the petitioners*. But for reasons already shown above, even these assumptions by the Board do not make a sufficient showing of *need and justification* for the

extension of Federal authority over matters otherwise within the domain of State authority and so for the displacement of the existing control by the State.

The predominance of local interest and concern

We have emphasized the predominance of the inter-relation of the petitioners' operations, transactions and labor relations and the domestic welfare and local government of the State of New York, over any separate National interest, together with the local regulatory measures already effective as to petitioners' operations and labor relations under the laws of the State of New York, because we believe that *considerations of this predominance and the correlative absence of any necessity for superseding State control with Federal control, constitute a judicial yardstick by which the validity of the jurisdiction sought by the Board should be tested.*

This Court adopted such a rationale in sustaining the State regulatory authority in *Pennsylvania Railroad Company* v. *Knight*, 192 U. S. 21, 26:

> "To hold the even balance between the Nation and the States in the exercise of their respective powers and rights, always difficult, is becoming more so through the growing complexity of social life and business conditions. Into many relations and transactions there enter elements of a National as well as those of a State character, and to determine in a given case which elements dominate, and assign the relation or transaction to the control of the Nation or of the State, is often most perplexing."

It seems to us that the Chief Justice indicated essentially the same test, in sustaining the exercise of Federal power in the *Jones & Laughlin* case, upon the basis of the organization of industries on a National scale which make "their relation to interstate commerce *the dominant factor* in their activities." He said (301 U. S. 1, 41):

> "When industries organize themselves on a National scale, making their relation to interstate com-

> merce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war?"

This Court declared further, in the *Knight* case (page 27):

> "But when service is wholly within a State, it is presumably subject to State control. The burden is on him who asserts that, though actually within, it is legally outside the State; and unless the interstate character is established, locality determines the question of jurisdiction."

The excerpts from these two opinions are pertinent to the record here, because it is barren of any showing of the *necessity or appropriateness* of the Board's proposed exercise of power under the commerce clause. The facts here negative any claim that the petitioners' "relation to interstate commerce" is in any way "the dominant factor in their activities." Of course, the National Board found that if the petitioners' services were effectively interrupted by a strike, there would be some obstruction of the flow of commerce, but that generalization falls far short of a showing that the intervention, jurisdiction and action of the National Board in destruction of State regulation are essential or appropriate; it is far short of satisfying the foregoing ruling that "unless the interstate character is established, locality determines the question of jurisdiction." Anything found by the Board here falls far short of overcoming the presumption that the action of the State of New York, under its State Labor Relations Act, to protect the safety, comfort, health, convenience and general welfare of its people, would not serve at least equally well and altogether adequately any more remote economic welfare and commercial convenience implicit in maintaining a "free flow of commerce".

More important still, the generalized findings here are far short of the mandate of this Court in *Florida* v. *United States*, 282 U. S. 194, 211, 212, that the exercise of Federal power under the commerce clause shall be conditioned upon

> "suitable regard to the principle that whenever the Federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the Federal power must clearly appear"

and be supported by adequate evidence and findings of appropriate definiteness.

Significance of the principles of the *Florida* case and related rulings

If such a basis for determining the issue of Federal versus State control over matters claimed by Federal authority to have some National as well as State elements (namely, according to the predominance of the State or Federal interest in the subject matter and with regard for the existence or absence of need for supplanting State and Federal control) were held invalid, and if the rationale and decision of this Court in *Florida* v. *United States, supra*, were held to be inapplicable to this case, we would be at a loss to anticipate or suggest a basis for judicial judgment whereby any State control of any matter otherwise within the domain of State power would survive otherwise than by the possible sufferance of the Congress and the boards created by it. True indeed it is that, "If centripetal forces", to quote Mr. Justice Cardozo in the *Schechter* case (295 U. S. 495, 554), "are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our Federal system."

The Board seems disposed to disregard these considerations entirely. In its brief in opposition to certiorari, it took the position:

> "Petitioner repeatedly suggests that it would be more appropriate for their labor relations to be governed by the New York Labor Relations Act. But

> the fact that New York has enacted a statute similar to the Federal law is irrelevant to the question of Federal power. The power of Congress to prevent serious interruptions to interstate commerce must be the same in all the States; whether that power should on occasion yield to State action under similar State legislation is entirely a matter of legislative policy and not of constitutional law." (Brief, page 22)

These avowals seem alien indeed to the principles expressed by this Court in the *Florida* case and the *Knight* case, quoted above, as well as the kindred opinions in *Pennsylvania* v. *Williams, et al.*, 294 U. S. 176; *Hopkins Savings Assn.* v. *Cleary*, 296 U. S. 315. These decisions seem to us to illustrate the limitations which our federal system of government necessarily places upon the exercise of National jurisdiction over matters of domestic concern. Where the local interest in internal affairs and transactions dominates, control over such matters should be assigned to the State rather than the Nation, so as "to hold the even balance between the Nation and the States in the exercise of their respective powers and rights".

> *Pennsylvania Railroad Company* v. *Knight* (at page 26).

Under the principles of the *Florida* case as we read it, there can be no presumption that local activities or anything pertaining thereto so *affect commerce* as to justify the interjection of Federal control. On the contrary, as was there held in accord with the *Knight* case (page 27), "when service is wholly within a State, it is presumably subject to State control."

It cannot be accepted as either essential or appropriate for the Federal Board to take control of local activities in which the inhabitants of the State have a paramount interest, and upon which the State and City governments are directly dependent in exercising many important parts of their police powers, and over which the State has established a complete and adequate system of control "for

accomplishing the same end, through the action of a State officer, in substantially the same manner and without substantially different results from those to be obtained" by the exercise of Federal authority.

Pennsylvania v. *Williams* (at page 182).

The contentions of the Board seem to be in direct conflict with the principles of these cases. And certainly it is not clear how its thesis that "The power of Congress to prevent serious interruptions to interstate commerce *must be the same in all the States*" is any more compelling with respect to the labor relations of an intrastate employer like the petitioners, than it was with respect to the *intra-state* rates of an interstate carrier, as involved in the *Florida* case. There has been and could be no finding or showing that the business of supplying gas, steam and electricity to local consumers in one city and county is of such a character as to require general and Nationally *uniform* regulation.

Missouri v. *Kansas Natural Gas Company*, 265 U. S. 298, 309.

Jurisdiction not conferred because some of the petitioners' customers are engaged in interstate commerce

The Court below thought that this jurisdictional issue should be "approached as a question of fact, namely, what will be the result upon commerce of a labor dispute between the petitioners and their employees" (R. 1741). In view of the stated functional dependence of several railroads locally upon the petitioners' service, it was concluded that "Should such a dispute result in interrupting the petitioners' service, the effects upon commerce would be catastrophic" (R. 1741). The idling of the railroads, stoppage of interstate communication, and the going out of the lights which aid interstate ferries and foreign steamships, if such should be the result of interference with the continuity of the petitioners' service, would constitute "effects we cannot regard as indirect and remote" (R. 1741-1742).

Do *customers'* mechanical connection with, or functional dependence upon, the petitioners' services, determine the issue of Federal versus State control of the *petitioners'* transactions and relations? Are, for example, the local water companies, the rapid transit companies, the bus companies, taxicab companies, suppliers of foodstuffs to dining cars, etc., in and about New York City, also to be brought within exclusive Federal control because railroads or other customers are mechanically connected with, or functionally dependent upon, the services of these local enterprises?

Did all of the local utility companies and other suppliers of the employers in the *Jones & Laughlin*, *Fruehauf*,[1] *Friedman*[2] and *Santa Cruz*[3] cases come under Federal jurisdiction upon the rendering of the decisions in favor of the Board by this Court in those cases?

Functional dependence could not control the constitutional issue

The functional dependence of many if not most of the petitioners' customers upon the continuity of petitioners' operations and service, has been summarized at pages 15 to 18, *ante*. This same functional dependence is equally immediate and real with respect to the services of every operating utility in every single community in the United States which has a utility company. And rare and tiny indeed is the utility company in any community in the United States which supplies no service for postal facilities, nor to any telephone or telegraph company, nor to any broadcasting stations, nor to any newspaper plant, nor to a carrier by air, water or land. Rare and small indeed is that operating utility company in the United States which does not supply customers who, in turn, buy and sell in interstate or foreign commerce.

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[1] 301 U. S. 49.
[2] 301 U. S. 58.
[3] 303 U. S. 453.

The Court below said: "This is not to say that all utilities are within the Act. 'The question is necessarily one of degree.' " (R. 1742).

But if the problem were "approached as a question of fact, namely, what will be the result upon commerce of a labor dispute" between the utility company and its employees if such dispute should result in interrupting the company's service in disregard of the paramount local interests and the adequate State regulation according protection to both interstate and intra-state interests, rare and small indeed would be any utility company anywhere in the United States which would not be brought within the Act.

The remoteness of the relationship relied on by the Board

But even with respect to the petitioners here, we maintain that the Board and Court erred in holding that such a close and substantial relation exists between the petitioners' labor practices and possible obstruction of commerce as constitutionally could justify subjecting the petitioners to Federal control.

The "ifs" in the causal sequence posed by the Board and sustained by the Court are manifest: *If* a labor dispute should arise between the petitioners and their employees, and *if* that dispute *should result in a strike*, and *if* that strike should culminate in a sufficient shut-down of the petitioners' service, commerce conducted *by others* would or might be interrupted.

The Court's construction of the consummation of such a contingency accords no efficacy or credit to the office and functions of the New York State Labor Relations Board, nor to the other public authorities of the State and City of New York who would be immediately and primarily concerned by the incipiency of such a labor dispute. And certainly there is no basis, we submit, for an assumption that the National

Board could be or would be any more effective than the New York State authorities in *absolutely preventing* the catastrophe resulting from the strike as posed by the Court. The Federal Act, like the State Act, refrains from vesting the Board with any prohibitory powers over strikes (the privilege of striking is expressly reserved) and, we repeat, there is no showing that the National Board in the exercise of its jurisdiction over labor practices is more qualified to act against the petitioners than are the New York State Labor Relations Board and other New York public authorities.

But even if the labor practices of the petitioners were in a close and substantial relation to the free flow of commerce, we do not understand that Federal jurisdiction may be extended over matters otherwise within the domain of State power as is attempted here. Even if the relationship between interstate and intra-state rates be considered "direct" (see, for example, the opinion of Mr. Justice Cardozo in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 328), it will be remembered that the exercise of Federal authority over intra-state rates was sustained in the *Florida* case *only conditionally and secondarily;* namely, upon "suitable regard to the principle that whenever the Federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the Federal power must clearly appear" and be supported by adequate evidence and findings of appropriate definiteness. As we have shown (page 54, *ante*), there is no such evidence and there are no such findings here.

The applicability of the *Florida* decision here

To emphasize further the applicability of the rationale of the ruling of this Court in the *Florida* case, we refer to the following statement by the Chief Justice in the *Jones & Laughlin* case, as to the jurisdiction of the Board under the terms "commerce" and "affecting commerce":

> "The grant of authority to the Board does not purport to extend to the relationship between all indus-

> trial employees and employers. * * * It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds." (301 U. S. 1, 31.)

There are no findings, conclusions or evidence in this case that, ***notwithstanding the measures already taken by the State of New York,*** commerce has been, may be, or will be burdened or obstructed by anything which any employees of the petitioners have done or will do. There are no findings, conclusions, or evidence in this case which even profess to establish any justification for the assertion of jurisdiction by the National Board ***in derogation of the measures taken by the State of New York.*** Even more conspicuously than in the *Florida* case, the Board here has failed to find any deficiency in State control prejudicing the "free flow of commerce." The Board here has acted, as it has argued, as if its jurisdiction over the petitioners is absolute or at its unfettered option.

The underlying principle of the *Florida* case was given effect also, as we see it, in

> *Pennsylvania* v. *Williams, et al.*, 294 U. S. 176; and *Hopkins Savings Association* v. *Cleary*, 296 U. S. 315.

By the same token that the Federal Courts and other Federal authorities are required to refrain from taking cognizance of matters of domestic concern and policy when the exercise of such jurisdiction or power is neither appropriate nor essential by reason of the State's adequate processes to accomplish the same ends, thereby honoring the State's vital concern in controlling its own local affairs, so the National Board here should be excluded from jurisdiction over the petitioners, to the end that the State of New York may administer its affairs, free from unnecessary

Federal intervention. Such a ruling by this Court would establish again a

> "proper regard for the rightful independence of the State governments in carrying out their domestic policy".

The jurisdiction not conferred because some of the petitioners' supplies are acquired by others who bring them into the State of New York

The stipulated and agreed facts as to the origins of supplies used by petitioners are at R. 1364-1372. Gas-oil is delivered to only one of the petitioners; delivery is made by the seller, within the City of New York (R. 1368). Delivery of coal to the storage yards and stations, all within the City of New York or in Yonkers, is made by independent enterprisers (R. 1367-1368). No employee of the petitioners is engaged in interstate transportation of any materials (R. 1368). Some of the supplies other than coal and oil originate outside the State (R. 1371).

The petitioners concededly do not own or operate any oil wells, coal mines, factories, or facilities of interstate transportation (R. 1366). Purchases are made only from non-affiliated producers or dealers, and purchases extra-state are shipped only through instrumentalities of transportation which are owned and operated by independent carriers. All purchases are made by individual contracts covering the particular transaction (R. 1366, 1369). The source of supply may change depending upon market conditions, or the needs of particular petitioners (R. 1364, 1369). Requirements of particular petitioners are supplied from storage (R. 1364, 1367); no employee of any petitioner is involved until the supplies have "come to rest" in storage, and only an insignificant number of employees is involved until the supplies are moved into consumption (R. 1367-1368).

The record shows that the petitioners make all of their purchases for their own consumption exclusively. They buy nothing for resale in interstate markets or elsewhere; they sell their by-products entirely within the State of New York and credit the proceeds against their production costs (R. 1372-1373).

The controlling fact here, as in the *Schechter* case, is that although coal, oil and other materials originate outside the State, *the use of such materials is essentially and only local and intra-state;* viz., for the production of gas, electricity and steam for delivery to consumers wholly within the State of New York and *in no instance for National or interstate markets.* The interstate transportation that precedes local manufacture and distribution cannot be isolated to the exclusion of the local use for which the materials are intended. Since this use is local in its immediacy, it counteracts and outweighs the fact that the materials have an interstate origin; otherwise, every intra-state transaction which involved interstate transportation by others would come within Federal control and thereby put an end to our Federal system.

> *Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 554.

We submit that there could be no more basis for sustaining the Board's jurisdiction over the petitioners because of their purchases of supplies, than there would be in ruling that a *customer* of a utility company which is engaged in interstate sale of its service is subject to Federal control because he receives the utility service, and uses the service, only locally—for example, to light a hotel or office building. Moreover, this Court has held that even where a utility company buys its supply of gas from interstate distribution (which these petitioners do not do as to gas, electricity, or steam), the State jurisdiction is nevertheless paramount with respect to the operations of the

utility company. In *Missouri* v. *Kansas Natural Gas Company*, 265 U. S. 298, 309, this Court ruled:

> "The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

Petitioners are not themselves engaged in "commerce as so defined"

The Board's brief in opposition to the petition for certiorari said that "Especially inaccurate and misleading is the repeated assertion by petitioners that they 'are concededly not engaged in "commerce" as defined in the Act' (Brief, pp. 10, 12)". (Brief, page 21; note 7). The Board charged that such a view is advanced "in complete disregard of the fact that petitioners' purchases and receipts of huge quantities of raw materials are transactions unquestionably in interstate commerce. Cf. *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Local 167* v. *United States*, 291 U. S. 293" (Brief, page 21).

The Board's charge should have been directed against the Court below, which observed (R. 1739) that

> "It is not contended that the petitioners are themselves engaged in commerce as so defined [in the Act]".

The Board's thesis strikingly reveals, moreover, the drastic extent to which the Board would extend its authority over intra-state enterprises: e. g., If X buys intra-state consumable supplies which Y moves in interstate commerce, X is thereby engaged in interstate commerce.

To the contrary, we cite the rationale and decisions of this Court in:

Southern Natural Gas Corporation v. *Alabama*, 301 U. S. 148;
Missouri v. *Kansas Natural Gas Company*, 265 U. S. 298;
Public Utilities Commission v. *Landon*, 249 U. S. 236;
Schechter Poultry Corporation v. *United States*, 295 U. S. 495.

Recent decisions under the Act not decisive or controlling here

The Court below observed that "None of the Labor Board cases decided by the Supreme Court has presented a situation like that at bar. In three of them the Board's order ran against an employer whose business, though local in respect to manufacturing, was plainly interstate in respect to sales of a very large percentage of its manufactured product. *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1; *Labor Board* v. *Fruehauf Co.*, 301 U. S. 49; *Labor Board* v. *Clothing Co.*, 301 U. S. 58. In one case the employer was engaged in a business of interstate communication (*Associated Press* v. *Labor Board*, 301 U. S. 103); in others the business was interstate transportation of passengers. *Washington Coach Co.* v. *Labor Board*, 301 U. S. 142; *Labor Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261; *Labor Board* v. *Pacific Greyhound Lines*, 303 U. S. 272" (R. 1742-1743).

In the case of each of these employers, interstate commerce was a "dominant factor in their activities", and there was no aspect of predominantly local activities and importance. To the group of cases referred to by the Court below may now be added that in *Santa Cruz Co.* v. *Labor Board*, 303 U. S. 453. There also the employer "was directly and largely engaged in interstate and foreign" sale and shipment of the finished product (page 463), and "there

is a constant stream of loading and shipping of products" (page 461), involving directly the *employer's* shipment of at least 37 per cent of his output in interstate commerce.

In none of these cases was the organization and conduct of the employer's business such as to be completely within the authority and powers of a single State; and in none of these cases was there consideration of the effects of the existence of a State Act and a State Board, organized and adequate to deal with the labor relations of employers which constituted predominantly local concerns.

In the case at bar, there could be no problem of breaking with the one-time traditional distinction between "production" and "commerce" in determining the extent of Federal authority to protect interstate commerce from undue burden or obstruction. The petitioners' production and distribution are wholly within the State of New York; they have no interstate sales. They are independent contractors who sell and supply to their customers such amount of their services as their patrons may demand; they exercise no managerial control over their customers or any of their operations. Their purchases of materials originating outside the State of New York are entirely consumed in the operations of their local business and are never resold. The laws of the State of New York, including the New York State Labor Relations Act, give every assurance that would be available under the National Act that the petitioners' labor practices will never burden or obstruct interstate or foreign commerce.

In none of the cases thus far decided were the employers local operating public utilities supplying local service under plenary regulation by State laws and local franchises. In none of the cases was the employer's business one affected with such a local public interest permitting such regulation.

Above all, the petitioners are distinctively local, intrastate concerns supplying predominantly residential and

domestic patrons under plenary State regulation. The local interests are clearly ascendant and predominant.

Board not sole arbiter of its own jurisdiction

Obviously, the Act does not and could not make the Board's decision upon its own jurisdiction binding and conclusive upon litigants and the Courts. If so construed, the Act would be repugnant to constitutional right.

In some senses it is true that practically everything which takes place in American business, and indeed in American life, has some effects upon commerce between the States and tends or may tend to increase, diminish or affect materially that commerce. If the Board's contention in this cause is to be sustained, the Board at its own uncontrolled option can bring under its own jurisdiction the labor relations and practices of practically every business enterprise, small or large, in the United States, and other Federal agencies can apply the same self-expanding process to confer on themselves authority over practically any other phase of business or of life.

Generalized findings in the terms of the statute cannot remove such matters from plenary judicial review. Boundaries and demarcations between Federal and State authority must still exist and be defined and enforced. They may not be moved or obliterated at will by administrative discretion. Their declaration and enforcement remains a prime task of unfettered judicial statesmanship.

POINT II

The Board denied to petitioners the full and fair hearing and impartial determination which are prerequisites of judicial enforcement of its order

Even if the jurisdiction of the Board were to be sustained in this case, the order of the Board should be vacated because

the petitioners were denied a full and fair hearing and an impartial determination according to due process of law. Our challenge is based upon a combination and concert of significant instances. Each of them should, we believe, be sufficient, although standing alone, to vitiate the decision here under review. *Here they have all taken place in one proceeding.* In the aggregate, they show clearly the absence of impartiality as well as the inadequacy of the hearing, and we think that they call emphatically for refusal of enforcement of the Board's order.

If due process of law means the *substance* of right and fair play, we urge with conviction that *such a combination and concert of instances in a single proceeding* should not be condoned or judicial enforcement accorded an order made by the Board in such a manner. Whether these instances took place by design or through mistake or by after-thought, or as a combination of all three causes, they in any event do not produce a decision entitled to judicial enforcement here.

In the nature of things, the essential unfairness of the conduct of proceedings by such a board is not avowed by its counsel or attested by its decision. The presence or absence of "the rudiments of fair play" have to be determined by examining and weighing a variety and multiplicity of incidents, which may be especially significant and conclusive when taken together.

We have specified these matters and stated the facts as to them, on pages 26 to 35, *ante*. We have summarized our argument as to them on pages 44 to 47, *ante*. We have quoted on pages 26 and 27, *ante*, the characterizations of these matters by the Court below.

1. The Board's *ex parte* directions that the Trial Examiner deny to the petitioners an opportunity to present their case, even to the extent of refusing to hear witnesses present in the hearing-room, was both a denial of due

process of law and a non-compliance with jurisdictional prerequisites under Section 10(b) of the Act.

We have shown in detail (pages 27 to 31, *ante*) just what the Board or some member or subordinate thereof required the Trial Examiner to do, by way of denial of opportunity to the petitioners to present their case. This "remote control" of the hearing officer took place by telephone (R. 1187-1189; 1466, fol. 4396). The Trial Examiner TWICE indicated that he felt the Board had deprived him of any discretion in the matter (R. 1309-1312). Of course, no member of the Board had been present at the hearings, had seen or heard any of the witnesses, or had any first-hand knowledge of the situation before the Trial Examiner. In fact, the correspondence between the petitioners' counsel and the secretary of the Board showed that the Board's *ex parte* directions had been issued under a very substantial misapprehension as to what had taken place before the Trial Examiner (R. 1551-1553), in that the Board thought that *he* had made a fair offer which had not been accepted by petitioners' counsel (R. 1550), whereas the fact was that the offer had been made by petitioners' counsel and the Trial Examiner had not felt at liberty to accept it (R. 1312).

This action of the Board (or of the Trial Examiner under its mandate) was clearly arbitrary in the light of the extended opportunity which the Board allowed its counsel in presenting the Board's case; in the light of the freedom which the Board accorded its counsel in amending the Board's complaint during the proceedings and at their close; and in the light of the three months' delay following the summary closing of the hearings, before the Board took any further action in the proceedings. The Court below characterized the exclusion as "unreasonable and arbitrary" (R. 1747).

We emphasize that it was *the Board* that took the initiative in denying the petitioners a fair, full opportunity to present their case. The Trial Examiner indicated no sym-

pathy or accord with the Board's directions to him; counsel for the Board made no objection to the petitioners' request; he expressed himself upon the point as having "nothing to say" (R. 1190). We further emphasize that no reason has been sponsored by the Board or Trial Examiner in this record why the petitioners should not have been accorded their requested opportunity to present all of their evidence at the adjourned hearing on July 6, 1937, except that the Trial Examiner commented that he considered himself "bound by the decision of the Board" (R. 1312).

We maintain that this action by the Board was a direct violation of the mandate of Section 10 (b) of the Act, which provides that an employer complained of shall have the right to "give testimony at the place and time fixed in the complaint", and was contrary to Section 25 of the Board's own Rules, which provides—

> "Any party to the proceeding shall have the right to appear at such hearing in person, by counsel, or otherwise, to call, examine and cross-examine witnesses, and to introduce into the record documentary or other evidence."

This discriminatory departure from the provisions of Section 10 (b) of the Act and Section 25 of the Board's Rules went to the very jurisdiction of the Board, and should be held to have defeated its power to make an enforceable order against the petitioners.

> *National Labor Relations Board* v. *Hopwood Retinning Co.*, 97 Fed. (2nd) 97, 101; decided July 11, 1938 (C. C. A. 2nd).

Cf. *Interstate Commerce Commission* v. *Northern Pacific Railway Company*, 216 U. S. 538, 544 (and citations of the case by Mr. Justice Brandeis in *St. Louis & O'Fallon Railway Company, et al.* v. *United States*, 279 U. S. 461, 493, and in *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 75); *Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission*, 252 U. S. 178.

Exclusion of the testimony jurisdictionally vitiates the findings

The Court below thought the "unreasonable and arbitrary" exclusion of the petitioners' testimony did not affect the Board's finding and order, for the reason that upon the hearing of their petition for review the petitioners might have asked the Circuit Court of Appeals to have directed that the Board hear the excluded testimony and that Court might have done so, in its discretion, under Section 10 (f) of the Act. Because the petitioners did not ask the Court to order the Board to receive and consider the testimony which the Board had already refused to take, the Court did not disturb the findings which had been made on the basis of a record from which the petitioners' testimony had been arbitrarily excluded (R. 1312).

It does not seem to us that the arbitrary action of the Board may be thus disposed of. Fair play and full hearing are an obligation of the Board; findings made without them are *jurisdictionally defective and repugnant to due process of law*. For the Court to require the Board to receive and ostensibly to weigh evidence which the Board had arbitrarily refused to receive and consider, and to re-examine its findings in the light of the excluded testimony, would not remedy the fact that the Board's findings and order had been decided on and made in a manner which contravened the Act, the Board's own Rules, and the requirements of due process of law.

2. In conjunction with the other incidents of the case, a denial of adequate and fair hearing was inherent in the "transfer" of the case away from the Trial Examiner without findings and in the withholding of an opportunity for the petitioners to be heard before the Board which made the findings without hearing the evidence.

The facts as to this matter were stated at pages 31 to 35, *ante*; and our argument as to it was summarized at page 45, *ante*.

Nearly three months after the closing of the hearing and the denial of the petitioners' request that witnesses in their behalf be heard, the Board ordered that the proceedings "be transferred to *and continued before* the Board". The petitioners had no notice of this action, other than that involved in receiving a copy of the order after it had been made (R. 1502-1503). Despite Sections 32 and 34 of the Board's Rules, the Trial Examiner made no tentative findings nor intermediate report (at least neither was ever disclosed to the petitioners). No opportunity for any hearing, or to make any argument, or to file any brief, before the Board, was ever accorded the petitioners. Such was the action of the Board, notwithstanding the petitioners' formal application for such an opportunity to be heard by the Board (R. 19-21, 32, 143) was at all times pending before it.

This refusal or failure to give the petitioners an opportunity to see and be heard as to an intermediate report or proposed findings, or even an opportunity to be heard before the Board at all, becomes here of *major and far-reaching effects*, for the following reasons: If there had been any preparation and submission of an intermediate report or proposed findings, or if the petitioners had been allowed to come before the Board itself and be heard, almost certainly there would have been disclosed to the petitioners any intent or proposal, on the part of the Board, to invalidate the contracts with the Brotherhood.

This case is unlike *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333, 350, 351, where "the issues and contentions of the parties were clearly defined" and "no other detriment or disadvantage is claimed to have ensued from the Board's procedure". There was no intermediate report or findings by the Trial Examiner in the *Mackay* case, after the "transfer" to the Board in Washington, but an opportunity for hearing and argument before the Board in Washington was granted and the hearing was held (page 340). *Either* the submission of an intermediate report *or* the holding of a hearing be-

fore the Board itself would have met the requirements and apprised the petitioners (and the Brotherhood) that their contracts were under attack.

Whether the Board's purpose to annul these contracts had been intentionally concealed by it throughout the hearings or was executed only as an after-thought, an intermediate report or a hearing before the Board itself would almost certainly have brought any such issue into the open. Considering what the Board actually did here, the petitioners had no inkling of any such issue or purpose until the Board's decision on November 10th. The petitioners had never argued or briefed the question of the validity of the contracts before the Board nor before its Trial Examiner.

Throughout the three months prior to the Board's order taking the case away from the Trial Examiner, the very Rules of the Board were and continued to be unequivocal representations to the petitioners that they would be served with tentative findings and intermediate report of the Examiner and that they would have opportunity to file exceptions thereto (Sections 32, 34), and that in any event would be given a suitable opportunity for oral argument before the Board (Sections 29, 37).

The *misleading* information, in the "transfer order", that the proceeding was to be *"continued before the Board"*, certainly gave no indication (much less any full and fair notice) that the Board had taken over the proceeding for the single purpose of deciding it without giving the requested opportunity to be heard (R. 21). The order directed that the proceeding "be transferred to and *continued before the Board*" (R. 64).

Although the order did not indicate the next step in the proceeding so *continued*, the Rules of the Board induced a reasonable belief by the petitioners that there would be further proceedings before the Board and that the long-delayed hearing by the Board would at last be granted. The

requirements of such Rules, although self-imposed, should be deemed to establish prerequisites with which the Board must comply, in order to make a lawful determination. Cf. *Matter of Prowler* v. *Taylor*, 212 App. Div. 116.

These Rules as they then stood (see the Appendix, *post*), seem to us to provide that the Board may remove a proceeding at any time after a charge is filed, either "for the purpose of taking evidence" or "for any other purpose." When the Board transfers a case "for the purpose of taking evidence," then Section 38 of its Rules applies. In such case, the Board, having heard the testimony itself, may decide the matter forthwith upon the record. But when the hearing is transferred "for any other purpose", we submit that Section 37 should apply. Under that section, the Board would be required to conduct the *subsequent hearings* in accordance with the *"provisions of Sections 3 to 31, inclusive, of this Article."*

Sections 3 to 31 deal with the procedure to be followed by the Trial Examiner and, when applicable, by the Board. Among other applicable provisions is the requirement of Section 29:

> "Any party to the proceeding shall be entitled to a reasonable period at the close of the hearing for *oral argument*, * * *."

This requirement is obligatory upon the Trial Examiner, notwithstanding that he has seen and heard the witnesses and followed the evidence as it was presented. This right to be heard becomes all the more vital when the case is taken away from the Trial Examiner and taken over by the Board and its members, who have seen and heard none of the witnesses and do not have the aid and guidance of findings and recommendations by the Trial Examiner under Section 32 of the Board's Rules.

It may be contended that Sections 37 and 38 of the Board's Rules give the Board an unfettered discretion, either to grant to a party to a proceeding the benefit of the Trial Examiner's findings and an opportunity to appear and be heard before the Board, or to suppress, if it sees fit, the proposed report of the Trial Examiner who heard the witnesses, and to deny the party aggrieved an opportunity to present exceptions and appear before it. If such construction is urged by the Board and is upheld, we think that this Court should outlaw any combination of rules of procedure such as Sections 37 and 38 of the Board's Rules here, in so far as they vest discretion in the Board (1) to *initiate* proceedings against a respondent upon the basis and expectation that there shall be findings and a report of the Trial Examiner to which exceptions may be filed by the respondent (Section 32), *but* (2) leave the Board free at any time, even after the close of hearings, to "transfer" the proceeding at its pleasure and *ex parte*, and thereby obviate any such findings, report and opportunity to take exceptions, including any opportunity to appear and be heard orally before the Board.

The Court below said, with obvious moderation and restraint, that the Board's procedure was "not one likely to inspire confidence in the impartiality of the proceedings" (R. 1743). To the petitioners it seems to have been used as a device to cut short their right to be heard fully.

3. The Board's course of action in repeatedly amending its complaint in substantial respects, down to the last day of the hearings, and in failing to give notice or information of such amendments to the Brotherhood, and in refusing to give to the petitioners an adequate opportunity to meet and deal with the changed situations produced by such unexpected amendments, should be taken into account, in conjunction with the other facts as to the manner of hearing and determining this case.

The facts and circumstances as to these amendments were stated at pages 6 and 7, *ante*. Without further argument here, we submit their occurrence as a part of the pic-

ture, to be taken into account with the other circumstances as to what the Board did as to its own case.

4. Without notice to the petitioners or the Brotherhood and without ever stating an issue as to such contracts, either in the complaint as first served or as from time to time amended or on the hearings, the Board invalidated the petitioners' collective bargaining contracts with the Brotherhood and the 30,000 employees who were members of the Brotherhood.

We have stated the facts as to these matters at pages 33 to 38, *ante*, and have summarized our argument concerning them at pages 45 and 46, *ante*.

Argument would seem hardly to be required, to establish that the Board may not invalidate and "dis-establish" the existing contracts without ever stating an issue as to the validity of the contracts, without ever giving to anyone notice or information of such a challenge and issue, and without giving to anyone an opportunity to be heard by the Board as to the validity of the contracts.

Yet that is what the Board has here undertaken to do, by Section 1(f) of its order, which directs the petitioners to "cease and desist" from "Giving effect to their contracts with the International Brotherhood of Electrical Workers" (R. 128). The Court below found that, in view of other provisions of the Board's order, the nullification of these contracts was inappropriate and that petitioners' employees would have "complete freedom to join United in preference to the Brotherhood, or to join neither" (R. 1745-1746).

The petitioners maintain that the record of the course of action of the Board with respect to these contracts discloses either (1) a purpose of the Board not to reveal its claims with respect to them or let the petitioners and the Brotherhood be heard as to them; or that (2) their invalidation was an after-thought, not in mind during the hearings, never disclosed, even belatedly, because the petitioners were

never given a hearing before the Board. In either event, the petitioners were kept in the dark upon this matter from beginning to end—there was no notice of any claim against them and, of course, no opportunity to be heard, to submit any argument or to submit any brief as to their validity.

It seems obvious that the petitioners had a right to be apprised of this issue and be heard as to it. Our challenge is based directly upon what this Court said in *Morgan, et al. v. United States*, 304 U. S. 1:

> "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one."

Efforts of the Board to justify its course of action

In its brief in opposition to certiorari, the Board said that "The complaint specifically charged the petitioners with having violated Section 8 (1) of the Act by coercing their employees to join the Brotherhood (R. 15). Petitioners were thus unmistakably informed that *their relationship with the Brotherhood was claimed to have been tainted by* violation of the Act, and was to be the subject of investigation at the hearings" (Brief, page 26).

This is not inconsiderably vague—*what* "relationship"? Again there is no mention of *subsisting contracts*. We urge, moreover, that specific matters charged in the complaint involving Section 8 of the Act (being paragraph 22 charging unfair labor practices under subdivisions (1) and (2), of Section 8) (R. 15) constituted no basis for the petitioners being "unmistakably informed", or even suspecting, that collective bargaining *contracts* with the Brotherhood were to be any part of "the subject of investigation at the hearings". If the Board had desired any such unmistaken information, *why was the complaint never amended to include them?*

Furthermore, as we have said before, the validity of the contracts was never made the subject of any attack or investigation at the hearings.

The Board also said that "At the hearings it was brought out that the contracts were made for the purpose of throttling free self-organization and were one of the means of coercion utilized by petitioners in violation of this Section [Secton 8]—indeed, that they were the culmination and the fruit of the coercion" (Brief, page 2[illegible]). Such a statement was not supported by the record, and there could be no citation to the record to support it. The Board dismissed so much of the complaint as charged (Par. 22) the petitioners with "contributing financial or other support to the International Brotherhood of Electrical Workers"; and the Court below found that the invalidation of these contracts was inappropriate, in view of other provisions in the Board's order, to give the petitioners' employees "*complete freedom to join United in preference to the Brotherhood, or to join neither.*"

In its brief in opposition to certiorari (page 29), the Board, in effect, took the position that in the absence of an application by the petitioners *to the Court* for permission to adduce additional evidence under Section 10 (e) of the Act, *the Courts* should approve of a procedure under which the Board may freely annul the contracts of parties without stating any issue as to them and may not only disregard the requirements of its own Rules [Sections 4 (c) and 5] which require that the charge to be answered contain "a clear and concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrence" but it may also deem itself independent of Section 10 (b) which enables the Board to act *only* upon a "complaint stating the charges".

To say the very least, these contentions deny that the very statute creating the Board and its jurisdiction is of

controlling consequence with respect to its procedure. There can be no support for such contentions. "The Act establishes standards to which the Board must conform. There must be complaint, notice and hearing."

National Labor Relations Board v. *Jones & Laughlin Steel Corporation*, at page 47.

In effect, the Board contends that notwithstanding the express provisions of Section 10 (b) of the Act and Sections 4 (c) and 5 of its own Rules, it should be allowed in effect to first condemn and then hear, and so be given power "possessed by no other officer, administrative body or tribunal under our Government."

Interstate Commerce Commission v. *Louisville & Nashville Railroad Co.*, 227 U. S. 88, 91;
Morgan v. *United States*, 298 U. S. 468; 304 U. S. 1;
United States v. *Seminole Nation*, 299 U. S. 417, 421-422;
Federal Trade Commission v. *Gratz*, 253 U. S. 421, 427.

In the last cited case, this Court ruled that the Commission acting under Section 5 of the Federal Trade Commission Act is jurisdictionally dependent upon the complaint, and that if it acts otherwise its order is improvident "and, when challenged, will be annulled by the Court." The same rule should apply to the proceedings and order under the Act. Such is the plain intention of Section 10 (b) of the Act as well as of Sections 4 (c) and 5 of the Board's Rules and Regulations and the due process requirements of a fair hearing. See, also:

National Labor Relations Board v. *Hopwood Retinning Co.*, 97 Fed. (2nd) 97, 101 (C. C. A. 2nd); decided July 11, 1938.

We maintain further that the provision of Section 10 (e) of the Act, to which the Court below referred in sustaining the Board's exclusion of petitioners' evidence, was never intended to apply to a situation like that now under con-

sideration. Such a ruling by the Court below would permit unrestrained action by the Board in excluding testimony and evidence for no reason whatsoever, thereby forcing the victim to pursue the Board in Court for an order requiring the Board to receive the evidence. The opportunity for full and impartial hearing should not be conditioned upon the necessity of such interlocutory resort to the Court from time to time for compulsory orders against the Board to require it to give such a hearing.

The discriminatory departure from the Act and Rules nullified any jurisdiction of the Board to make this order or any part thereof.

Interstate Commerce Commission v. *Northern Pacific Railway Company*, 216 U. S. 538;
Kansas City Southern Ry. Co. v. *Interstate Commerce Commission*, 252 U. S. 178.

We contend that when the Board "unreasonably and arbitrarily" disobeyed the requirements of the Act and its own Rules, its action was *ultra vires* the statute.

5. Remote hearsay and mere rumor were permitted to dominate the testimony, to an extent repugnant to due process of law.

This aspect of the record should be appraised and given effect, from examination of it, in conjunction with the other matters already stated as to the manner of trial and determination. We shall discuss this aspect under Point III of this brief, in relation to the question whether *substantial evidence* supports the Board's findings.

Cumulative effects of the matters complained of

Under the various headings above, we have brought together the details of the course of action which the Board followed as to these petitioners. The non-judicial, sum-

mary, *ex parte* action of the Board in directing the Trial Examiner to restrict and exclude the petitioners' witnesses and evidence; the arbitrary exclusion of such testimony; the acceptance and use of remote hearsay testimony beyond the reach of cross-examination and transcending the traditions of an impartial, judicial or quasi-judicial tribunal; the *ex parte* transfer of the proceedings to the Board without notice (other than a copy of the order, which was positively misleading) and with no opportunity for the petitioners to show before the Board even that they may have been prejudiced by the cutting off of all opportunity to except to the Trial Examiner's findings and report; and the action of the Board in not revealing its claim against the petitioners' collective bargaining contracts with the International Brotherhood of Electrical Workers, did in the aggregate deny in substance and not merely in form, petitioners' rights to a full and impartial hearing and fair adjudication.

St. Joseph Stock Yards Co. v. *United States,* 298 U. S. 38;
Morgan v. *United States,* 298 U. S. 468, 480;
Morgan v. *United States,* 304 U. S. 1.

In *St. Joseph Stock Yards Co.* v. *United States, supra,* Mr. Justice Brandeis observed (page 73):

> "The inexorable safeguard which the due process clause assures is * * * that the trier of the facts shall be an impartial tribunal; that no finding shall be made except upon due notice and opportunity to be heard; that the procedure at the hearing shall be consistent with the essentials of a fair trial; and that it shall be conducted in such a way that there will be opportunity for a court to determine whether the applicable rules of law and procedure were observed."

If, as the Court below found, the Board's refusal to hear petitioners' witnesses was "unreasonable and arbitrary", and if the Board's *ex parte* "transfer" and decision of the case without findings or intermediate report by the Trial

Examiner were a procedure not "likely to inspire confidence in the impartiality of the proceedings", and if the contracts with the Brotherhood were nullified unnecessarily without notice of any claim against them and with no opportunity to the petitioners or the Brotherhood to be heard even by argument or brief in support of them, then we submit that the "applicable rules of law and procedure" essential to due process were *not* observed by the Board.

POINT III

The Board's findings disregarded the substantial evidence, and the Court below adopted an inadequate standard of review of the Board's findings, thereby sustaining findings not supported by substantial evidence

The petitioners are confident that the outcome of this case should and will be determined by the considerations which have been urged under the preceding points of this brief. There is, however, a third aspect of the case which has no inconsiderable importance, as to the law and the facts; and the petitioners are unwilling to leave with the Court any impression that they acquiesce in the findings, the atmosphere, and the imputations, with which the Board has surrounded, and tried to fortify, practically the whole of its decision and order.

Any extensive reading of the testimony of the Board's witnesses will, we believe, show the flimsy and biased character of the "evidence" which the Board preferred to accept as basis for findings. Even the testimony of the Board's own witnesses was sufficient to cast doubt upon the verity of its findings. Reading of the testimony of Mr. Floyd L. Carlisle and Mr. Harold Dean, the only two witnesses whom the Board permitted the petitioners to place on the stand, would leave an indelible impression that the realities of the situation were not as the Board's findings stated them to be.

The Board's disregard of the substantial evidence upon the major issues would have been demonstrated and corrected, we think, if the reviewing Court had not substantially misconceived the scope of its powers and duty to scrutinize and review important findings of fact by the Board. It declined to search the record to see if the findings were supported by *substantial* evidence. Thereby the Court below seems to have *abdicated* or unduly limited its judicial functions in this field, to the extreme of sustaining the Board's findings unless, as it said (R. 1746), the record "*is wholly barren of evidence*" to support them. Such a test does not afford a judicial review of a substantial quality and efficacy.

> *Washington Coach Company* v. *National Labor Relations Board*, 301 U. S. 142, 143;
> *Pennsylvania Railroad Company* v. *Chamberlain*, 288 U. S. 333, 339-343;
> *National Labor Relations Board* v. *Thompson Products*, 97 Fed. (2nd) 13, 15.
>
> See, also, the numerous cases cited on pages 48 and 49, *ante*, as to the rulings of the various Circuits that the findings of the Board are to be sustained only if supported by *substantial* evidence.

To illustrate: The opinion of the Court below as to the findings of fact concerning the discharge of five employees, said (R. 1746):

> "The petitioners presented testimony that these men were discharged because it was necessary to reduce the size of two departments in which they worked; that in making such reductions preference was given to married employees; and that these men were single and were treated no differently than others, both union and non-union, who were laid off about at the same time. The Board rejected this explanation chiefly, it would seem, because other single men with less seniority of service were retained. The question is not whether this court would have reached the same conclusion as the Board, but whether there

is evidence, to support the Board's findings. Section 10(d). *We cannot say that the record is wholly barren of evidence to support the charge that they were discriminated against on account of union activities. Hence the order requiring that they be reinstated and made whole for losses sustained by reason of their discharges must stand.*" (Italics ours.)

Even the Act, we submit, contemplates a more substantial judicial scrutiny of the evidence supporting the Board's findings of fact. Under the Act an order of the Board is made enforceable by the Court upon "a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board" (Section 10[e]). The Court is empowered to enter its decree "*enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part* the order of the Board." "The order of the Board is subject to review by the designated Court, *and only when sustained by the Court* may the order be enforced." *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation, supra* (page 47).

Review should see if substantial evidence supports the findings

We urge with confidence that these functions cannot be said to have been exercised in a *substantial* manner if the Court scrutinizes the evidence supporting contested findings of the Board only to the extent of determining that "We cannot say that the record is *wholly barren of evidence* to support the charge * * *".

In the *Jones & Laughlin* case (page 47), this Court declared that "the findings as to the facts are to be conclusive, but only if supported by evidence."

In *Washington Coach Co.* v. *Labor Board*, 301 U. S. 142, 147, the matter was amplified as follows:

> "In the case of statutory provisions like §10(e), applicable to other administrative tribunals, we have

refused to review the evidence or weigh the testimony and have declared we will reverse or modify the findings only if clearly improper or not supported by substantial evidence."

This requirement of "substantial evidence" has been elaborated upon in subsequent judicial decisions. In *National Labor Relations Board* v. *Thompson Products*, 97 Fed. (2nd) 13, 15 (C. C. A. 6th), the matter was stated as follows:

> "Section 10(e) of the Act, 49 Stat. 453, 29 U. S. C. A. 160(e), provides that the finding of the Board as to the facts, if supported by evidence, shall be conclusive.
>
> "In applying such statutory provisions, the court will not review the evidence or weigh the testimony and will approve the order of the Board unless clearly improper or unsupported by substantial evidence. Washington, Virginia & Maryland Coach Company *v.* Labor Board, 301 U. S. 142, 147, 57 S. Ct. 648, 650, 81 L. Ed. 965.
>
> " 'Substantial evidence' means more than a mere scintilla. It is of substantial and relevant consequence and excludes vague, uncertain, or irrelevant matter. It implies a quality of proof which induces conviction and makes an impression on reason. It means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and, considering them in their eitirety and relation to each other, arrives at a fixed conviction.
>
> "The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power. Testimony is the raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be wrought."

In *Appalachian Electric Power Co.* v. *National Labor Relations Board*, 93 Fed. (2nd) 985, 989 (C. C. A. 4th), it was said:

"The rule as to substantiality is not different, we think, from that to be applied in reviewing the refusal to direct a verdict at law, where the lack of substantial evidence is the test of the right to a directed verdict. In either case, substantial evidence is evidence furnishing a substantial basis of fact from which the fact in issue can reasonably be inferred; and the test is not satisfied by evidence which merely creates a suspicion or which amounts to no more than a scintilla or which gives equal support to inconsistent inferences. Cf. Pennsylvania R. Co. v. Chamberlain, 288 U. S. 333, 339-343, 53 S. Ct. 391, 393, 394, 77 L. Ed. 819."

Of course, it is necessarily recognized that these definitions of the requirements of "substantial evidence" provide no mechanical assurance of a proper determination in a particular case. We quote them, however, as a basis for urging upon this Court a conviction that: (1) The Board disregarded the realities and the substantial evidence, in making the findings on which it based most of its recriminations and its mandates; (2) The Court below scrutinized the evidence in support of the findings of the Board according to a standard too lenient—by a standard which provides no "dividing line between law and arbitrary power"; and (3) Under a more substantial standard conforming to the substance of right, the findings of the Board respecting the petitioners' reasons for discharging the six employees named in the amended complaint and the order based thereon, and the findings of the Board upon other controverted matters, should and would have been set aside by the Court below.

Remote hearsay and rumor dominating the testimony

First we ask the Court to note, from the record, that the quality of the testimony which the Board's counsel was allowed to introduce, over petitioners' objections, and upon which the Board rested its findings, fell below the requirements of an impartial tribunal. Rules of evidence were disregarded, not at all to facilitate the exposition of expert

opinion or to aid the establishment of technical evidentiary data or abstruse conclusions of fact or law. We urge with strong conviction that any extended examination of the record of the testimony of the Board's witnesses (excepting, of course, the stipulated and agreed facts on jurisdiction) will disclose that prejudicial hearsay three or more degrees removed and mere rumor were freely received. To illustrate: A member and paid organizer of the United (Mr. Kennedy) would testify that another member and organizer of United (Mr. Young) told him on the telephone ("either in the latter part of 1934 or the first part of 1935") something which some other person told Young that such other person thought (R. 617, 618, 619).

Instances of this character abound throughout the transcript; they are the rule rather than the exception; and the petitioners' objections to the character of such evidence were almost always overruled. See, also, the repeated instances where petitioners' objections to evidence as to matters transpiring not merely before the complaint, but even before the effective date of the Act, were likewise overruled (R. 179, 193, 194, 199, 354, 357, 358, 427, 430, 431, 436, 1107, 1198).

To illustrate further: In a back-handed way, Paragraph 17 of the complaint supported its charge (that of "interference" with the right of employees to form, join or assist labor organizations), by alleging that the petitioners "employ and have employed industrial spies or undercover operatives for the purpose of disclosing to the respondents the activities of their employees in and on behalf of labor organizations."

The undisputed testimony was and is that the petitioners' employment of outside investigating agencies of any kind and for any purpose was voluntarily discontinued by the petitioners in the Summer and Fall of 1936, and in no instance continued after November of that year (R. 336). The only specific instance adduced as to any matter within the scope of the Board's case was in April of 1935 (R. 300),

before the taking effect of the Act. There was specific and extended evidence that the work of such outside agencies as were formerly employed by the petitioners, was directed to matters within the province of management and other than employee activities in labor organizations (see R. 324-325, 333-336, 1273).

In any event, the petitioners' voluntary and complete discontinuance of the employment of outside operatives, more than six months before the complaint was served, made the allegation of Paragraph 17 moot and academic; and the matter did not figure in the case, after the fact of discontinuance in 1936 was established.

Again, a reading of the testimony of Mr. Carlisle (R. 1202-1354) and Mr. Dean (R. 1254-1308) will, we think, negative the impression that actual *coercion* of employees by the management took place, through discharge of employees or otherwise. Some employees joined and are members of the Independent Union, some joined and are members of the CIO affiliate (now known as the United), some joined no labor organization, and more than 80 per cent of the employees joined the Brotherhood. *Thirty thousand* employees of such an industry were not *coerced*.

The basic point of view of the management was that which, according to the testimony of one of the Board's principal witnesses (R. 892), Mr. Carlisle expressed on April 22nd to a large meeting of the employees and their representatives (R. 1209 *et seq.*):

> "Let me say it very plainly, no member working for this company has got to do anything except what they want to do individually, on their own. I will be very clear about that. It is your selection. *You are to do as you please.* We are not taking the position that you must do this or you cannot do this. *You have to make the choice.* * * * You go out and do what you want."

Illustration of the results of the standard applied by the Court below

We have noted that the Court applied its standard specifically (R. 1746) in sustaining the Board's findings relating to the petitioners' alleged reasons for laying off five of the six employees whom the complaint charged had been discharged for their union activities. Here at least were instances where the men discharged were called as witnesses, and they *testified* that they were discharged because they belonged to a union. *The question which required the judgment of the Court below was whether the substantial evidence supported their highly interested avowals.* Therefore, without in any way accepting or acquiescing in the findings of the Board or the Court below upon other controverted matters, we shall demonstrate our point by dealing specifically with the very findings as to these men. We do so with conviction that the same erroneous and inadequate concept of its power and duty to search the record to see whether or not there was *substantial supporting evidence* for the Board's findings, undoubtedly pervaded the action of the Court below in sustaining other findings of the Board.

The findings and the evidence as to the discharge of six men

Five of these six men were employees of one of the petitioners, New York and Queens Electric Light and Power Company. Three of these five employees, Messrs. Wersing, Greulich and Wagner, were laid off on November 29, 1935. Two of them, Messrs. Kennedy and Emler, were laid off on June 19, 1936. The sixth man, Mr. Solosy, was an employee in the chemical department of the gas business of the petitioner, Consolidated Edison Company of New York, Inc. He was laid off on January 17, 1936.

We review the evidence upon which the Board's findings are supposed to rest:

1. As to Messrs. Wersing, Greulich and Wagner

At the time of their discharge (November 29, 1935), these men were employed as clerks in the work order bureau

of the auditor's department (R. 1255) which has to do with the allocation of charges to work orders, the keeping of the stores inventory, and the pricing and posting of costs of materials, etc. (R. 1255). They were so employed by the petitioner, New York and Queens Company.

Mr. Wersing was a clerk in the pricing and posting section of the bureau—one of twelve clerks. Mr. Greulich was a clerk in the same section. Mr. Wagner was an accounting assistant in what is known as the other order division of the work order bureau (R. 1256).

Mr. Wersing and Mr. Greulich reported to a clerk in charge, who, in turn, reported to a Mr. Locke, chief of the division, and he, in turn, reported to a Mr. Mehrtens, supervisor of the work order bureau, and the latter reported to Mr. Hausenbauer, who was the auditor and in charge of the auditor's department (R. 1256).

Mr. Wagner reported to a clerk in charge who, in turn, reported to a Mr. Eller, chief of the other order division, and Mr. Eller reported to Mr. Mehrtens mentioned above (R. 1256).

What were the circumstances inducing their discharge?

They were laid off to provide for the transfer of surplus employees in the inventory department. The inventory department had been made necessary by the requirements of an order of the Public Service Commission (R. 1257-1258). A force of some 222 men was assembled for this work between September, 1934, and June, 1935 (R. 1257, 1258). All but three members of this force had been transferred from other departments, where there was already a surplus of employees (R. 1259-1260). Thirty-two came from the auditor's department (R. 1260).

The order of the Commission as to the continuing property records was contested in the Courts and was annulled

in part (R. 1258). As a consequence, the inventory department was over-manned and it was finally reduced from 222 to 45 (R. 1260, 1279). Forty-two employees of this department were laid off directly and 135 were transferred to other departments (R. 1260). These transfers were the occasion in almost every instance for the discharge of a like number of employees in the departments to which these transfers were made (R. 1260, 1306-1307).

The determination of what employees should be laid off to make way for those transferred was not a one-man job. It was decided by Mr. Dean, the Vice-President of the Company, upon the recommendation and reports of the personnel director who had charge over all departments, in conjunction with the heads of the sections, divisions and bureaus which might be affected by the transfers (R. 1261, 1282-1283, 1285).

Mr. Dean testified that he was aware of the union activities of these men (R. 1266, 1272); and it is shown that in February or March, 1935, Mr. Wagner formally notified Mr. Hausenbauer (auditor, and in charge of the auditor's department as set forth above), by letter of his affiliation with the Independent Brotherhood of Utility Employees (R. 717). From Mr. Wagner's own testimony, none of his supervisors is shown to have considered this membership of any moment affecting his employment (R. 718). Mr. Greulich, likewise (R. 552-553).

Studies of personnel in preparation for the reduction of the inventory department began in July, 1935 (R. 1284), and there was a gradual reduction from about that time (R. 1285).

Other employees had been laid off before the men in question; men were laid off on the same day; men have been laid off since. The Board may be technically correct in stating (R. 112) that:

"On November 29, 1935, the three employees were the only employees laid off in their respective *divisions.*"

In all fairness, however: (1) Two other employees, who were members of the so-called "company union", were also laid off at the same time, *as the Board's own witness testified* (R. 482, 564); (2) Mr. Dean further testified on cross-examination by the Board as follows: "Q. Did you consider them for employment elsewhere? A. No, for the reason that *I knew I had a couple of hundred other men to let go*" (R. 1283).

In summarizing the interviews of the three men in question with Mr. Payne of the personnel department (he was not the director of the department, R. 1285), who notified them of their discharge, the Board says: "Each of the three men pointed out that other single men and girls with less seniority were retained, and requested an explanation. *Payne was unable to explain this fact*" (R. 112).

Mr. Wagner testified that Mr. Payne responded that "he is not making the decision" (R. 719). Mr. Wersing testified that Mr. Payne said "that it was not his choice and he did not know how it had come about" (R. 478). Mr. Greulich testified that Mr. Payne said: "Well, I don't know anything about that. I am merely carrying out orders" (R. 566).

We have set forth above the manner in which was determined by recommendation and report of department heads in conjunction with the personnel director (R. 1283-1285), as to who should be laid off and who retained. Mr. Payne was "carrying out orders" from his superiors, which fully explains why *Mr. Payne* could not "explain".

The combined test of family responsibility, efficiency and seniority

The Board further says: "Dean, in his testimony, did not explain why certain single employees with less seniority

were retained, except for the general statement that the department heads in the exercise of their judgment, determined that a number of single employees with less seniority than these three men were more deserving of retention in their jobs because of special qualifications" (R. 112-113). This, the Court below found, was the principal basis for rejecting the Companies' explanation of the lay-offs (R. 1746). *But there was no requirement of law or public policy that* SENIORITY ALONE should have controlled the selection for lay-offs.

When any substantial regard is accorded the uncontroverted testimony, it seems impossible to appreciate how the alleged failure to explain "why certain single employees with less seniority" were retained, was entitled to such weight and compelling force in the Board's findings that the three men "were in fact discharged because of their activities in the Independent Brotherhood" (R. 112-114).

Mr. Dean's testimony stands uncontroverted that seniority was not the sole standard of selecting those to be transferred or laid off but that determinations were made in the light of interrelated factors of family responsibility, efficiency and seniority (R. 1261-1262). There is no finding or showing that these three men were superior to those who remained on the basis of the three factors considered in the combined test. The record shows that—

1. All three of the men in question were young men and none of them was married (R. 1268).

2. Concerning their efficiency as compared with those transferred from the inventory department and displacing them, Mr. Dean testified that "in all cases the men who were transferred from the inventory department were better as employees, or at least as good, and in addition they were all married men" (R. 1268). Their seniority also, he testified, was "at least as long as that of Messrs. Wersing, Greulich and Wagner" (R. 1268).

3. Mr. Dean's further testimony stands uncontradicted that these three men were originally employed in 1929; that, of the forty-two men who were laid off directly from the inventory department, thirteen had been employed in 1929 and eleven subsequent to 1929; eighteen had been employed prior to 1929. Of those transferred back to other departments, thirty-one had been employed during 1929 and forty-five subsequent thereto; fifty-nine had been employed prior to 1929 (R. 1267).

4. With respect to testimony of Mr. Wagner that the three named employees of his bureau (in which there were between seventy and eighty employees) (R. 711-712) were junior to him in length of service, Mr. Dean testified that two of those named were employed in 1929, but at a later month than Mr. Wagner, and the third was employed in January, 1930 (R. 1267-1268, 1282).

5. We also are at a loss to appreciate any validity, or plausibility even, in the argument of the Board (R. 113) that "In the application of the respondents' standard of preference to married men, other things being equal, Wagner would certainly not be the first and only man in his division to be laid off. *Since he was laid off at the same time as Wersing and Greulich, his fellow officers in the Independent Brotherhood, a finding that he was discharged for union activity would be strong evidence that the other two men were discharged for the same reason*".

We know of nothing in the record to support this suggestion that Mr. Wagner was "the first and only man in his division to be laid off". We utterly fail, moreover, to see any validity in the point that if he were laid off for union activity, it would be "strong evidence" that some of his fellow officers in the union also were laid off for the same reason, especially in view of the constant reduction of the Companies' required working forces, both before and after the lay-offs of these few employees (R. 468, 563).

Fair treatment during long period of union activities negatives the Board's inferences

The Board reviews the "union activity" of these three men from about the time they became members of the Independent Brotherhood in February, 1934 (R. 108-110), through November 15, 1935, when they conferred with Mr. Dean, "concerning the discharge of James Mannix, an active member of the Independent Brotherhood. They were satisfied," the Board concludes, "with the reasons given for his discharge and did not press the matter further." The Board then adds: "Dean, however, expressed a strong antipathy to the presumption of the Committee in attempting to interfere with the exercise of his discretion to discharge employees" (R. 111).

Then follows the following combination of argumentative conclusion and remarkable prognostication: "Thus immediately preceding their discharge their union activity had become intensified, while the chief result of their interview on November 15 with Dean * * * *was the likelihood that the memory of a disagreeable episode would linger in Dean's mind*" (R. 111).

Mr. Dean's testimony stands uncontroverted that he did not directly or indirectly cause any of these men to be laid off because of any union activities (R. 1266), and as for the foregoing prognostication of Mr. Dean with lingering, vindictive embitterment over the interview of November 15th, we respectfully request this Court to view Mr. Dean's testimony on cross-examination at R. 1274.

In light of the "union activity" of these men which the Board has found must have been so offensive to the petitioners and that it began *early in the year 1934*, it seems extraordinary beyond belief that, under the Board's theory that they were discharged because of their union activity, they should not have been discharged a long time before November 29, 1935.

In October, 1934, some fifty men were laid off at one time, as one of the Board's witnesses testified (R. 563), but none of these men was included, notwithstanding their union activity at and before that time.

In August, 1935, twenty-five men were discharged from the inventory department, including Mr. Alfred Wrench who was secretary of the union in which these three men were members (R. 468, 563). But none of these men was displaced, notwithstanding their union activity at and before that time. The Board's complaint, moreover, nowhere challenges the discharge of Mr. Wrench, nor is his discharge mentioned in the Board's finding that twenty-five men were laid off in August, 1935 (R. 112).

Notwithstanding Mr. Wersing's extensive "union activity" (R. 431-437) for a long time before, in May, 1935, the Company transferred him from night work to day work at his request (R. 498). "Yes, I would think it was a promotion," he testified (R. 499). Previous requests for transfers also had been granted him during the years 1933 and 1934 (R. 462-466). And, as Mr. Wersing testified, his transfer involved the lay off of the men who had held the job to which he was transferred (R. 518-519)!

Notwithstanding the extensive Union activity of Mr. Greulich from early in the year 1934, the Company allowed him a weekly increase in pay of $2.75 on the basis of a reclassification of his status. This was made after his request in the summer of the year 1935.

In this connection it is also noteworthy that in their *unsuccessful* suit in a State court, based on their discharge, Messrs. Wersing, Greulich and Wagner predicated their cause of action upon an assertion which fully substantiates the testimony of Mr. Dean; namely, that they "were discharged * * * for no other reason than they had to make adjustments in the department looking toward further

economies" (R. 580). Mr. Greulich testified that they took this position "in an effort to get the money" (R. 581). But it seems obvious that if *discrimination* for union activities had been regarded by them at the time as the *motivating cause* of their discharge, they would have asserted it then. Obviously, the present theory was not then in mind; in any event, they will advance any theory "to get the money" (R. 581).

2. As to Messrs. Kennedy and Emler

At the time of their discharge (June 19, 1936), these men were employed in the overhead bureau of the distribution department of the New York and Queens Company (R. 1255). That bureau has to do with the installation and the removal of poles, wires, installation of meters, etc. (R. 1256). Both employees were linemen, first grade (R. 1257).

What were the conditions which brought about their discharge? The overhead bureau had been very active originally when the Borough of Queens was in process of development from a rural area into a borough of the City of New York. There was a great volume of overhead work in the installation of new distribution lines and their extensions (R. 1262). For the past several years, however, this area has been more completely built up; developments have subsided and the overhead work of the Company has constantly declined accordingly (R. 1262).

In addition, municipal authorities have required the Company to change over its distribution system from overhead to underground lines, and this has been going on even during the depression (R. 1263).

The Board concedes that the evidence supports the petitioners' contention that the Company has been in process of reducing the number of its employees in the overhead bureau because of the change of character of the work from overhead to underground (R. 121, 1284).

This process of gradually reducing personnel in this bureau has continued from sometime during the year 1932 (R. 1284). On January 1, 1932, there were 402 employees in the overhead bureau. On December 31, 1936, there were 329. At the time Messrs. Kennedy and Emler were laid off, there were 336 (R. 1263, 1290).

During this period, the Company has attempted in every way possible to provide substitute work to obviate lay-offs, including work on underground lines, work on consumers' premises and even the digging of ditches for conduits into such premises (R. 1257, 1264, 1300-1301, and cf. R. 702).

Attempts also have been made from time to time to enable men to transfer to other Companies within the System Companies where work is available. Indeed a "lead", at least, was given these men, at the time they were discharged, for possible employment with The New York Edison Company (R. 1264, 1265, 1298, 1307, 1308, 659-662).

We note, however, the observations of the Board:

> "It is most significant that the discharges occurred within a week after Kennedy's election as Plan representative for the overhead bureau. He had proved himself a source of trouble to the respondents when he previously held that position, and it was certain that he would now renew his activity within the Plan in opposition to the respondents' domination of the Plan. His election to that position, in spite of his open affiliation with an outside union, is an indication of the influence he wielded among the employees of the overhead bureau. *Discharge would automatically terminate his membership in the Plan, or a transfer to another of the respondents' companies would automatically make him a member of the Plan of such other Company* where he would not retain his position as a bureau representative. *The evidence points to this as the true explanation for the course adopted by the respondents of giving him a choice between discharge* and a transfer to an inferior position in another of the respondents' companies" (R. 120).

This is indeed a remarkable conclusion as to "the true explanation" of the Company's action. We respectfully request this Court to examine the record in this connection at R. 1264, 1265, 1298, 1307, 1308, 659-662, heretofore cited.

Mr. Kennedy's union activity readily dates back into the year 1934 as the Board has found (R. 115-117). He may have considered himself "a source of trouble" to the petitioners for the reasons recited by the Board, but certainly there is no evidence that they took him so (R. 1289, 1296-1297). As in the case of the three men considered above, there was ample time to have discharged Mr. Kennedy long before June 19, 1936, for a great number of men had been let out before that (R. 1263, 1269), including linemen (R. 1284).

Mr. Emler's union activity was comparatively inconspicuous (R. 676-680). It is manifest that he was not regarded by the petitioners as any source of trouble because of his union activity (R. 1289).

Mr. Dean's testimony stands uncontroverted as to how these men were selected to be laid off, namely, by their supervisor and the personnel director in the light of their personnel records and the combined test of family responsibility, efficiency and seniority (R. 1261, 1290, 1269).

The Board states that Dean "did not adequately explain why Kennedy and Emler were laid off, while men with less seniority were retained; nor did he adequately negative Kennedy's statement that after his discharge the men in the overhead bureau were placed on a six day week and that other men were transferred to his department" (R. 119-120).

Mr. Dean did testify, however, how the men were selected to be laid off, as set forth above. And while Mr. Kennedy's record for absences from work is explainable to some extent on account of his illness, the fact still remains that he was

absent from work more than twenty per cent of the time during the twelve months immediately preceding his discharge (R. 1269, 1294). Mr. Dean also testified that Mr. Kennedy's date of last employment was January 18, 1928, and that Mr. Emler entered the Company's employ on July 18, 1927 (R. 1268); that at the time of their discharge there were 54 first grade linemen with terms of service longer than those of the men in question; that twelve had shorter service and that six were in between the two men (R. 1269; cf. R. 689).

Mr. Dean also testified that a short time after the discharge of these men "we had a spurt of work in connection with electric drain installations and we put back people from the Edison Company temporarily that we had previously sent over since then" (R. 1299).

His testimony also stands uncontradicted that the jobs held by Messrs. Kennedy and Emler were left unfilled (R. 1257).

Mr. Kennedy's testimony is also of record that, through the personnel department of the Company, Mr. Kennedy and Mr. Emler were offered an opportunity to get employment in another Company (the New York Dock Company) in the Fall of 1936 (R. 664-665, 694). Mr. Emler took the job and still held it at the time of his testimony (R. 694).

The Board says that "*Payne's* admonition to him [Mr. Emler], in December, 1936, not to resume his 'funny business' at the New York Dock Company clearly indicates how long-lived was the recollection of Emler's union activities in the minds of his supervisors" (R. 121; cf. Mr. Dean's cross-examination, R. 1289).

Apparently this is intended to refer to Mr. Emler's testimony as to what *Mr. Smith* (not Mr. Payne) of the personnel department of the New York and Queens Com-

pany said to Mr. Emler at the time the foregoing job as lineman was procured for Mr. Emler in the Fall of 1936 (R. 694).

We respectfully request the Court to examine Mr. Smith's statement as testified to by Mr. Emler (R. 694). We urge with confidence that the Board would have enjoyed no such free hand in imputing connotations to such variable terms as "funny business" as it here assumes, if the petitioners had been accorded full and fair opportunity to present their case at the hearings.

3. As to Mr. Solosy

Mr. Solosy was employed in the chemical department of the gas business of the Consolidated Edison Company at the time he was laid off on January 17, 1936 (R. 340-348). He was unmarried (R. 383). Several other employees in the same department were laid off at the same time (R. 124, 395-396) because of the closing down of one of the System Companies' gas plants, namely, the "A" plant of The Astoria Light, Heat and Power Company (R. 348). By an offer of sworn testimony of two chemists who were department heads and in the room at the final hearing, the petitioner, Consolidated Edison Company, sought to show that the discharge of Solosy had no relation to his activities or membership in any labor organization (R. 1314); that lately several large gas plants in Manhattan, The Bronx, and Queens, have been shut down and dismantled (R. 1314); that changes and reduction in the labor forces in the chemical department have been continuous and enforced (R. 1315); that such reductions in forces have been made from time to time (R. 1315); that Solosy's work was ordinary (R. 1315). He was laid off under the circumstances stated in the offer of proof (R. 1314-1315) and not at all because of any union activity, but because reduction in forces was necessary and because better trained and more technically educated employees were preferred for retention (R. 1315).

Considerations ignored by the Board

In concluding this review of the evidence relating to the reasons for the discharge of the foregoing men, we should emphasize that the Board's findings and conclusions completely ignore (1) that although several of the Board's witnesses were employees of the petitioners with records for union activity comparable to that of the foregoing men, and might, therefore, have been deemed a "source of trouble" to the petitioners according to the Board's theory, they were still retained in the employ of the petitioners at the time of the hearings (e. g., Mr. Young, employed by the New York and Queens Company, R. 967-990; Mr. McGowan, also employed by the New York and Queens Company, R. 1130; and Mr. Harding, employed by the Consolidated Edison Company, R. 730); and (2) that, although the labor union in behalf of which Messrs. Wersing, Greulich, Wagner, Kennedy, Emler, Solosy and others were active as set forth above, had a membership of petitioners' employees probably as high as twelve hundred in number (R. 390) during more or less of the period of their union activity, the Board appears to have been unable to find that any other members had been discharged for their union activity. And as we have set forth above, the Board nowhere challenged the discharge of Mr. Wrench, secretary of the union, which took place when the twenty-five men were laid off in August, 1935; and the Board reports (R. 111) that when Messrs. Wersing, Greulich and Wagner conferred with Mr. Dean on November 15, 1935 concerning the discharge of James Mannix "an active member of the Independent Brotherhood", "They were satisfied with the reasons given for his discharge * * *";

The petitioners maintain that the questions of jurisdiction and due process of law are decisive of the proceeding here; but we submit that to the extent the substantial evidence in the record is examined, the lack of support for the Board's findings on controverted issues is demonstrated.

POINT IV

The decree of the Circuit Court of Appeals granting enforcement of the order of the Board should be reversed; and the decision, findings, conclusions and order of the Board should be in all respects annulled and set aside

Dated: New York, N. Y., September 17, 1938

Respectfully submitted

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APPENDIX

Applicable Provisions of the Board's Rules and Regulations, Series 1, as amended and effective April 27, 1936 [1 L. R. R. Manual 814].

ARTICLE II

PROCEDURE UNDER SECTION 10 OF THE ACT FOR THE PREVENTION OF UNFAIR LABOR PRACTICES

HEARING

Sec. 25. Any party to the proceeding shall have the right to appear at such hearing in person, by counsel, or otherwise, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence.

Sec. 29. Any party to the proceeding shall be entitled to a reasonable period at the close of the hearing for oral argument, which shall not be included in the stenographic report of the hearing unless the Trial Examiner so directs. The parties shall be entitled to file briefs or written statements only with permission of the Trial Examiner.

INTERMEDIATE REPORT AND TRANSMISSION OF CASE TO THE BOARD

Sec. 32. After a hearing for the purpose of taking evidence upon a complaint, the Trial Examiner shall prepare an Intermediate Report, which he shall file with the Regional Director issuing the complaint, who will thereafter transmit the original of the Intermediate Report to the Board in Washington, D. C., and cause a copy thereof to be served upon each of the parties to the proceeding. Such report shall contain (*a*) findings of fact, separately stated and numbered and (*b*) recommendations as to what disposition of the case should be made, which may include, if it be found that re-

spondent has engaged in or is engaging in the alleged unfair labor practice, a recommendation as to what affirmative action should be taken by respondent to bring about a condition in harmony with the law.

EXCEPTIONS TO THE RECORD AND INTERMEDIATE REPORT

Sec. 34. If any party desires to take an exception to the Intermediate Report or to any other part of the record (including rulings upon all motions or objections) he shall within ten days from the date of service of the Intermediate Report file with the Board at Washington, D. C., four copies of a statement in writing setting forth such exceptions. Immediately upon the filing of the statement of exceptions the party filing the same shall serve a copy thereof upon each of the other parties to the proceeding. Upon proper cause shown, the Board may extend the period within which to file a statement of exceptions.

PROCEDURE BEFORE THE BOARD

Sec. 36. Where the Trial Examiner has found in his Intermediate Report that the respondent has engaged in or is engaging in unfair labor practices affecting commerce, the Board may, upon the expiration of the period for filing a statement of exceptions, as provided in Section 34 of this Article, decide the matter forthwith upon the record, or after the filing of briefs, or oral argument, or may reopen the record and receive further evidence, or require the taking of further evidence before a member of the Board or other agent or agency, or may make other disposition of the case. The Board shall notify the parties of the time and place for any such submission of briefs, oral argument, or taking of further evidence.

Where the Trial Examiner has found in his Intermediate Report that the respondent has not engaged in and is not engaging in unfair labor practices affecting commerce, and

no exceptions have been filed within the period for filing a statement of exceptions, as provided in Section 34 of this Article, the case shall be considered closed. The Board may, upon motion made within a reasonable period and upon proper cause shown, reopen the record for further proceedings in accordance with this Section.

Sec. 37. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may permit a charge to be filed with it, in Washington, D. C., or may, at any time after a charge has been filed with a Regional Director pursuant to Section 2 of this Article, order that such charge, and any proceeding which may have been instituted in respect thereto—

(*a*) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(*b*) be consolidated for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same region; or

(*c*) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in or transferred to such other Region, or for any other purpose.

The provisions of Sections 3 to 31, inclusive, of this Article shall, in so far as applicable, apply to proceedings before the Board pursuant to this Section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this Section, be reserved to and exercised by the Board. After the transfer of any charge and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to this Section, the provisions of Sections 3 to 36, inclusive, of this Article, shall

apply to such charge and such proceeding as if the charge had originally been filed in the Region to which the transfer is made.

Sec. 38. After a hearing for the purpose of taking evidence upon the complaint in any proceeding over which the Board has assumed jurisdiction in accordance with Section 37 of this Article, the Board may—

(*a*) direct that the Trial Examiner prepare an Intermediate Report, in which case the provisions of Sections 32 to 36, inclusive, of this Article shall in so far as applicable govern subsequent procedure, and the powers granted to Regional Directors in such provisions shall for the purpose of this Section be reserved to and exercised by the Board; or

(*b*) decide the matter forthwith upon the record, or after the filing of briefs or oral argument; or

(*c*) reopen the record and receive further evidence, or require the taking of further evidence before a member of the Board, or other agent or agency; or

(*d*) make other disposition of the case.

The Board shall notify the parties of the time and place of any such submission of briefs, oral argument, or taking of further evidence.

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No. 19

IN THE

Supreme Court of the United States

OCTOBER TERM—1938

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., *et al.*
Petitioners

against

NATIONAL LABOR RELATIONS BOARD
Respondent

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION
Intervenor-respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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NATIONAL LABOR RELATIONS BOARD, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

The brief for the Board does not meet, as we see it, the issues presented by the Board's action and the opinion of the Court below. Perhaps conveniently, the Board's brief is virtually silent as to the Court's considered criticisms of the Board's actions in this proceeding, and does not face the issues which now are here.

NOTE: At the time of writing this reply brief (October 12th and 13th), briefs in this cause had been received from the Board (on October 11th), the "United" (intervening CIO affiliate), the "Brotherhood" (American Federation of Labor affiliate), and the American Federation of Labor. The brief of the United is based in very material respects upon misstatements of the record, as shown graphically in an Appendix on pages 25-28, *post*. The arguments of the Board and the United are generally along parallel lines, and this reply brief will discuss their *principal* contentions, for the most part as stated in the Board's brief.

1

As to the Board's Argument for Its Jurisdiction

The Board's brief suggests no boundaries, and would leave no boundaries, between National and State jurisdiction over labor relations and practices. Under the Board's present argument, its jurisdiction would exist at its own option fortified only by its own findings (in little, if anything, more than recitals in the language of the statute), and would be virtually co-extensive with industrial activity.

We have urged that, in a case of this character, the controlling jurisdictional questions are (1) as to whether or not the National Labor Relations Act is to be construed by this Court as having undertaken to delegate to the Board jurisdiction over employers who were not claimed below to be engaged in "commerce" as defined in the Act [1] and who are by their organization, scope and nature of business predominantly of local concern to the State and local governments which regulate them plenarily; and (2) whether the Act, if it is to be so construed and applied, is a constitutional exercise of the powers of the Congress. We have understood this Court to point out, in the *Jones & Laughlin* decision and the others which have followed it, that the Act here is not to be construed and applied so as to destroy "the balance of the constitutional grants and limitations", and may not apply to wholly intra-state activities unless "their control is" essential or appropriate to protect commerce from direct burdens and obstructions.

In the Board's brief as we read it, there is substantially no heed given to these questions as to the statute, no significance and practical effect ascribed to the reiterated statements of this Court.

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[1] The Court below said (R. 1739): "It is not contended that the petitioners are themselves engaged in commerce as so defined [in the Act]."

The Board's formula for establishing its own jurisdiction

The Board's brief does offer a mechanical, perhaps a more simple, standard for testing its jurisdiction or for avoiding or limiting judicial consideration of its determinations as to its jurisdiction. The full implications of the Board's *present* and self-executing formula should be noted, as they would lead to consequences far beyond the instant case.

As its major premise, the Board contends that its jurisdiction over a local enterprise is determined by the question: "Would 'stoppage of * * * operations by industrial strife' in that enterprise result in substantial interruption to or interference with the free flow of interstate commerce?" (Board's Brief, page 19). It introduces its minor premise with a preliminary but highly significant observation that "To the extent necessary to answer that question, the test is determined by the facts with respect to the particular enterprise" (Board's Brief, page 19). Then follows the Board's exposition and argument—a statement as to the "magnitude" of the petitioners' operations and the volume of some of their customers' interstate commerce which, may be dependent upon the continuity of their operations—that a cessation of petitioners' operations as a result of industrial strife would indubitably interfere with and obstruct the "free flow of commerce" carried on *by those customers*. From this, the conclusion is derived that the Board's assertion of its jurisdiction should be validated and enforced by this Court.

In other words, the contentions at one time urged before this Court in behalf of the Board, to the effect that the record must show that there is a reasonable probability that the labor practices will cause strikes with an intent to interfere with commerce, and that *if* such strikes "do

develope they will have a NECESSARY EFFECT of burdening and obstructing commerce," etc., are no longer urged. Emphasis is no longer placed by the Board on the interstate structure and organization of an industry and the need for a regulation as broad in scope as the scale of the operations. The present position of the Board's counsel is that if the Board makes a finding that the "stoppage of • • • operations by industrial strife" in a particular enterprise would result in what the Board regards as a substantial interruption or interference with interstate commerce, even though it be commerce carried on wholly by others, the Board has jurisdiction.

A few employees belonging to a minority labor organization can file a charge against a purely local employer; the National Board need only to find that a strike and stoppage of operations by the employer would obstruct or interfere with commerce, and the Board has thereby given itself jurisdiction to hear and determine the charge. The Board here made a finding couched in the language of the statute "that the activities of the respondents • • • tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce" (R. 125). Cf. Section 2(7) of the Act. By a similar process, virtually any employer can be brought under the Board's jurisdiction at the Board's option.

Such a formula ignores vital constitutional elements

Any plausibility which the Board's thesis may gain from over-simplification should not enjoy unearned regard. We ask: Why is the test of "stoppage of • • • operations by industrial strife" the point of inquiry as to the jurisdiction of the Board over an employer? Why does not the inquiry appropriately start further back; namely, *whether or not, in the absence of action by the National Board, the "unfair labor practices" under consideration are sufficiently*

likely, under the circumstances of the case, to result in a stoppage of operations of these petitioners, so as to establish a clear need and justification for the action of the National Board in taking jurisdiction of the petitioners with respect to those alleged practices, in order to protect the free flow of commerce?

The Board's syllogism ignores altogether the absence of evidence and findings that *its own action* is necessary in order to prevent "industrial strife" and "stoppage of * * * operations," etc. There are no findings or evidence here that any possible hazard of industrial strife which might result in stoppage of operations would not be adequately and effectively dealt with by the State Board. Indeed, we challenge anyone to read this record open-mindedly and escape the conclusion that the intervention of the National Board not only was wholly unnecessary for preventing industrial strife and averting any stoppage of operations, but also that the intervention and action of the National Board, its abrogation of contracts providing for arbitration, etc., tended rather to foment strife and to interject a danger of stoppage where no such danger existed before.[1] In any event, the record shows no reason for *assuming* that any unfair labor practices and their effects would be permitted by the State Board and the State and local authorities to develop any stoppage of service, as the continuity of the petitioners' service is a paramount concern of the State.

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[1] As the Board's brief refers in many footnotes (*e.g.*, on pages 4, 21, 23, 46) to papers and documents not in the record and subsequent to it, we refer to *The New York Times* for October 26, 1937, in which it appeared that the CIO affiliate which filed the charge here undertook to call a "strike" *while its charge was pending before the Board.* The number of employees involved in the "walk-out" was so few that their leaving had no effect on the continuity of service. The police and local Courts dealt with such disorders as were attempted. At about the same time, a controversy involving the laying off of 754 members of the Brotherhood was settled amicably by arbitration under the contracts. (See page 24, *post.*)

The Congress did not decide the present issue

The Board purports to fill in the wide gap in its reasoning, by making the following statement:

> "• • • The existence of *the nexus between unfair labor practices* condemned by the Act *and industrial strife* may not be challenged; *it is concluded for all cases* by the finding of Congress in Section 1 of the Act—a finding which was approved by the Court in the *Jones & Laughlin* case." (Board's Brief, page 19; see, also, pages 26-27.)

We urge with conviction that such a plea approaches the taboo of this Court against urging that constitutional causes be decided in an "intellectual vacuum." The "findings" by the Congress in Section 1 of the Act were not made in the light of, or with any consideration for, a case like the present case which involves an all-inclusive State Labor Relations Act lawfully applicable to the employer and which protects the continuity of the petitioners' operations from the consequence of unfair labor practices in every respect as adequately and completely as can be done under the National Act. No State Labor Relations Act had been enacted when the National Act became law. This Court warned, in the *Jones & Laughlin* case (page 30) against "superimposing" on the provisions of the Act "inferences from general legislative declarations of an ambiguous character", contained in Section 1 of the Act.

Nothing in Section 1 of the National Act purports to find that "*the nexus*" to which the Board refers exists, notwithstanding the existence of an applicable all-inclusive State Labor Relations Act. We believe, on the contrary, that it was a purpose, among others, of the Congress in enacting the National Act, to exemplify to the States a pattern of desirable State labor relations legislation which could be copied by them to govern the ever-expanding size and com-

plexity of present-day intra-state industrial relations. Indeed, it is a matter of public record that the National government urged just such exemplary action by the several States, in connection with the enactment of the National Act. The all-inclusive New York State Labor Relations Act, the State's administration of its Act by its Board, and the contractual provisions for the settlement of labor controversies by arbitration and without stopping work, are *realities* in this case. Only by some mechanical process of approach like that employed by the Board may they be ignored as futile and of no force and effect contrary to the principles of this Court as laid down in the *Florida* case.

From this background there seems to be no inconsiderable irony in the Board's attempted reaching for such extension of its jurisdiction, as in this case, in displacement of the New York State Labor Relations Act. Certainly the Congress gave no deliberations (much less made any "findings") concerning such a case. And so we urge again, and with reassurance, how unresolved are the "ifs" in the Board's findings concerning the causal sequence between the alleged unfair labor practices of the petitioners and the interruption or stoppage of interstate commerce of any of their customers; and we further urge that those "ifs" make manifest how remote and indirect is the relation of the former to the latter for any useful or appropriate Federal regulation.

The brief here for the CIO affiliate seems to consider it of some importance that the New York State Labor Relations Act did not become effective until after the initiation of the proceedings against the petitioners by the National Board. This fact is wholly unimportant because the State Act was stipulated by the parties, as a part of the record, on the first day of the hearings (R. 143, 149). The important point is: The State Act had become effective long before the Board's *findings, decision and order*. In short, the availability of the State forum was known to the Board at the time

its hearings started; and the question of the necessity and justification for the National Board's action, *notwithstanding the effect of the State Act*, became vital long before the Board had taken any important final action.

The *Santa Cruz* case not controlling here

The Board further argues that the petitioners' contention that the State law should govern their operations since they are predominantly local is refuted by the decision of this Court in the *Santa Cruz* case. The Board's brief says: "The contention that if, as petitioners allege, the effects of a stoppage of petitioners' operations are predominantly local, the State of New York and not the Federal Government, should control the labor relations in their plants is in direct conflict" with the *Santa Cruz* decision (Board's Brief, page 25).

We already have pointed out in our principal brief why we consider the decision in the *Santa Cruz* case is in no way controlling or applicable in the present case: This Court was not called upon in that case even to consider the effect of the existence of any applicable, all-inclusive State Labor Relations Act; there are no operations, activities, or sales of these petitioners—as there were of the employer in that case—reaching beyond the boundaries of a single State, which might handicap and delimit the effectiveness of a single State in the administration of its Labor Relations Act with respect to the employer; and the decision of the constitutional authority of the Board to intervene in the *Santa Cruz* case seems to us to have involved no possible consideration by this Court of even the intent or purpose, to say nothing of the power, of the Congress to make the National Act effective in such cases to the exclusion and displacement of any State statute. As we understand the reported opinion of this Court in that case, it intended to establish only a further specification of departure from the

former tradition which distinguished "production" from "commerce". An all-inclusive State Labor Relations Act and a State administrative board to carry it out are living facts in this case which were entirely absent in that case.

Statements of the Board in connection with its argument that our position that the effects of the stoppage of petitioners' operations are predominantly local and that the State Labor Relations Act should not be frustrated by the intervention of the National Board is in direct conflict with the decision in the *Santa Cruz* case, also induces the belief that the Board may not appreciate how the predominance and paramountcy of local over National interests should be determined under the yardstick of constitutionality which we have set forth. The Board asserts that Congress has not limited the application of the Act by any concept of "*preponderance of damage*" (Board's Brief, page 27). It also states that "Petitioners' assertion (Br., p. 67) that the interstate aspects of the enterprise were 'dominant' in the *Santa Cruz* case is completely inconsistent with the fact. As a matter of percentages, only 37 percent of the product moved in interstate commerce, while 63 percent of it did not."

In determining the predominance and paramountcy of local over National concern in petitioners' operations in this case, our conclusions are derived from the record in this case and are not dependent upon considerations of "preponderance of damage" nor upon considerations of *percentages* of their customers' production which are moved in interstate commerce. Indeed, in the present case, no part of the production of the employers is moved in interstate commerce and no part of the petitioners' production is destined for any re-sale in any out-of-State markets. What we have shown in our principal brief and what we wish to summarize here for possible further clarification is this:

That the predominance of local over National interest in the continuity of the petitioners' operations is derived only to a comparatively unimportant degree from any dollar and cent considerations, or considerations as to the functioning of mere commercial transactions and operations. We derive the conclusion of the predominance and paramountcy of the local interest in the continuity of petitioners' operations chiefly from considerations of the life, health and safety of the 7,000,000 souls who reside and do business from day to day in the City of New York and adjacent Westchester County and from the undisputed fact of the dependency of the State and City of New York and Westchester County upon their operations in exercising their police powers in behalf of the life, health and safety of those 7,000,000 human beings. Comparatively speaking, only a few kilowatt hours of petitioners' production of electrical energy are required to motivate the police services, the fire services, the sanitation services and the water supply services,[1] or to light the public streets of the City of New York and of Westchester County; *but the very State and City of New York and the County of Westchester are utterly dependent upon the petitioners' service for their fulfillment of these vital functions of local government.* We next derive our conclusion of the predominance and paramountcy of the local over National concern in the petitioners' operations from considerations of the usual *conveniences* which the petitioners' supply of service affords to its millions of residential consumers and its thousands of hospitals, hotels, restaurants, theatres, and commercial customers.

"Essential or appropriate"

The Board's brief, as we read it, does not refute or overcome the substantial number of practical consid-

[1] *Brush* v. *Commissioner*, 300 U. S. 352, 371.

erations which seem to us to demonstrate that, consistently with maintaining a dual system of government at all, it is not *"essential or appropriate"* that the Act be construed so as to uphold the Board's claim of jurisdiction over activities wholly intra-state in character. We emphasize the dependence of the local and State governments and police powers upon the petitioners' services, the predominance of their services to residential and other purely local consumers, and the State and local regulatory measures already effective as to the petitioners' operations and labor relations under the laws of the State of New York.

We point out that in the event of an interruption or threatened interruption of petitioners' services from any cause—hurricane, flood, fire, strike, or whatever contingency—the State and local officers and agencies would be those chiefly and effectively called into action, because of the predominantly local effects of such a contingency and the predominantly local means of dealing with it. *It has seemed to us that considerations of this predominance and paramountcy of the local interest and the local regulation, and the correlative absence of any showing or finding of any inadequacy of the State control or any necessity for superseding State with Federal control, constitute and offer an available judicial measure by which the validity of the Board's claim of jurisdiction should be tested and restrained.* Nevertheless, we find in the Board's brief no adequate reply to these considerations, no awareness that the Act should be construed so that it can "operate within the sphere of constitutional authority", and no suggestion of any rationale other than one which would leave the Board's jurisdiction virtually discretionary with itself.

The Board has not justified its claims

This Court held, in the *Knight* case (192 U. S. 21, 27), that "When service is wholly within a State, it is presum-

ably subject to State control," and that "The burden is on him who asserts that, though actually within, it is legally outside the State; and unless the interstate character is established, locality determines the question of jurisdiction." In the same case, this Court pointed out that

> "Into many relations and transactions there enter elements of a National as well as those of a State character, and *to determine in a given case which elements dominate*, and assign the relation or transaction to the control of the Nation or of the State, is often most perplexing." (Italics ours.)

Certainly the situation here as to these petitioners is not that described in the *Jones & Laughlin* case, as the organization of employers "on a National scale, making their relation to interstate commerce the dominant factor in their activities" (301 U. S. 1, 41). Neither the *Jones & Laughlin* case, nor any other case decided by this Court under the Act, has involved the existence and functioning of a State Labor Relations Act, inclusive of the provisions of the National Act—a comprehensive system of State regulation in no way found or shown to be inadequate for plenary control of the labor practices of the petitioners.

In view of these considerations, we urge with confidence that the Board's brief in no way meets or answers our contention that the action of the Board in this case was in plain disregard of the ruling and *rationale* of this Court in *Florida* v. *United States* (282 U. S. 194), which, as we see it, would temper and restrain all such hasty, drastic and unnecessary attempts[1] to reach out for Federal jurisdiction under circumstances like those here at bar, by requiring in cases like this one "suitable regard to *the principle that whenever the Federal power is exerted*

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[1] See *Lawrence* v. *St. Louis-San Francisco Railway Company*, 274 U. S. 588, 595.

within what would otherwise be the domain of State power, the justification of the exercise of the Federal power must clearly appear," and must be supported by adequate evidence and findings of appropriate definiteness.

State control the primary factor in stopping industrial strife in intrastate concerns

We turn next to the Board's assumption that if the National Board exercises its jurisdiction against the petitioners to eliminate alleged unfair labor practices by the petitioners, such action is necessary, and will operate, *to prevent* industrial strife which may result in a stoppage of the petitioners' operations and an interruption of their customers' interstate commerce.

We deem it important to identify with some precision the relationship of the functions of the National Board to this anticipatory protection of interstate commerce. It is clear that under the Act the Board performs its functions in the mode of a judicial or quasi-judicial body. After its complaint, it hears evidence as to the alleged unfair labor practices of the employer, and upon the record it is supposed to make its findings, enter its declaratory judgment and issue its injunction to cease and desist with respect to those unfair practices found to have been committed by the employer. As a practical matter the alleged unfair practices will already have occurred *before* any complaint, any judgment, or any injunction by the Board shall have been accomplished.

It is a factual reality in this case that if the petitioners' operations as public utility companies were threatened with interruption from any source whatsoever, *the actual intermediaries to prevent any stoppage of those operations*

would be the New York Mediation Board and the State Labor Relations Board, the Mayor of the City of New York, the Governor of the State of New York and other officials of the State of New York. These practical realities, we feel, fortify us in maintaining that there is no necessity and no justification for the National Board to exercise any jurisdiction under the National Act in displacement of the action of the State Board under the State Act. *There is no showing and there can be no showing that the semi-judicial procedure and the quasi-judicial process of making findings of fact, rendering a declaratory judgment and issuing an injunction to cease and desist, can be accomplished with more effect or greater validity of judgment by the National Board than by the State Board.*

According to the Board: "Petitioners' brief on this point would be much more appropriately addressed to an argument on *the propriety* of Federal regulation than to one on *constitutional power*. On the question of *policy*, the existence of a labor relations act in the State of New York would be a factor to be considered; on the question of *power*, it is wholly irrelevant" (Board's Brief, page 26).

This thesis especially manifests how mechanical the Board would have this Court function in purporting to derive its judgment in this cause. It accentuates the metallic ring of the Board's syllogism which is predicated upon a major premise so remarkably over-simplified for the purposes of this case.

We do not believe, in view of such cases as *Florida* v. *United States*, that this Court is prepared to deny itself all considerations of "*the propriety* of Federal regulation" in this case. We agree that the issue in this cause is that of *power under the Constitution*. But this case is one of those "individual cases" which has arisen under the Act; this Court (not the Board or the Congress) alone can decide

the issue; the issue presents a question which is "one of degree"; it imposes upon this Court the duty of "maintaining the balance of the constitutional grants and limitations" and the duty of determining the question whether or not the Board's action against these petitioners is with *"suitable regard to the principle* that whenever the Federal power is exerted within what would otherwise be the domain of State power, the justification of the exercise of the Federal power must clearly appear."

It seems clear to us that the Constitution and the decisions of this Court thereunder impose upon this Court in this case the necessity of considering with candid deliberation matters of *policy*, explicit and implicit, in the Constitution. Only after this Court shall have determined, with due regard and consideration to such matters of constitutional policy and principle, whether or not the Board *ought* to be allowed to exercise the Federal power which it has attempted in this individual case will the alleged *power* be ascertained or determined. No mere quantitative estimate of the petitioners' operations, no résumé of the relationship of the petitioners with their consumers, whether as a matter of mechanical connection or functional dependence, no mere quantitative estimate of the physical volume or dollar value of commerce carried on by the petitioners' customers, can displace and substitute for the deliberations of this Court upon the question whether or not this Board need and should be sustained in its attempted exercise of authority over the petitioners.

Principal argument of the United brief

The main contention of the brief for the CIO affiliate is best considered in the light of the illustration used at length on page 62 of that brief. The argument is that inasmuch as the Federal government has jurisdiction over the

railroad employee of an interstate railroad, who turns on the electric switch for the operation of a train which will move interstate, the Federal government should have like jurisdiction over the employees (of the petitioners) who produce that electric energy.

Such an argument disregards the fact that the switch is operated by an employee of a carrier which is engaged in interstate commerce and *is not subject to any State Labor Relations Act*, and that his duties are for the purposes of that commerce, whereas the employees of the petitioners are engaged in producing electricity primarily and predominantly for local residential consumers and the fulfillment of the police powers of the localities and the State. Such an argument ignores also the fact that the State has established a plenary and adequate system of regulating the labor relations of the employees of concerns engaged only in intra-state business. The argument of the CIO affiliate thus disregards wholly the principles enunciated in the *Knight* case (192 U. S. 21, 26), as well as in the *Florida* case.

2

As to the Board's Failure to Apprise the Employers and the Brotherhood That the Board Proposed to Determine the Validity and Abrogation of Their Contracts

The brief for the Board seeks to excuse the failure of its complaint to contain even a specific reference to the contracts or bring them "directly in issue." The Board's brief says (page 42) that "at the time it [the complaint] was issued and served none of the contracts had been executed". The complaint was served on May 12th; the Companies' recognition and public announcement (R. 1204-1205) of their contracts with the Brotherhood took place on the preceding April 20th (Board's Exhibits Nos. 13, 13(a) and 14; R. 871).

It is true that the definitive contracts with the seven Local Unions (listed at R. x and xi) were not executed until after May 12th, and we challenge counsel for the Board to state *which one* of the *several amendments* which the Board allowed itself to make of its complaint did bring the contracts "directly in issue" and apprised the Companies and the Brotherhood that the validity of the contracts was attacked and was to be adjudicated. The fact is that no such amendment was ever made.

Counsel for the Board will hardly deny that they have been aware that the invalidity of the contracts was not asserted at the hearings. The printed record of the hearings in this case comprises some 1,316 pages. We challenge counsel for the Board to call to the attention of the Court any specific pages of the record in which it is claimed that the Trial Examiner, counsel for the Board, counsel for the CIO, counsel for the employers, or anyone else, showed an awareness that the validity of the contracts was in issue. We ask that the attention of the Court be called to any statement in which the Trial Examiner or counsel for the Board informed the employers or the Brotherhood that the validity of the contracts was in controversy.

Counsel for the Board asked, on June 9th, for the production of the contracts (R. 868). This was done (R. 869-874); each of the contracts (as listed at R. vi, x, and xi) was "produced at the request of the Board". But counsel for the Board never intimated that he asked for the contracts in order to enable the Board to attack and abrogate them, and in fairness to him we state our belief that he had no such undisclosed purpose.

Counsel for the Board alleges that the employers brought the legality of the contracts into issue by pleading that the contracts with the Brotherhood as a recognized international labor organization made the claims of coercion,

etc., moot. Such a plea was made, *on the last day of the hearings* (R. 1201), and was made BECAUSE *there had been no attack on the validity of contracts with the Brotherhood representing 80 per cent of the eligible employees!*

The Board has not stated that its Trial Examiner was ever aware that the validity of the contracts was being litigated. By withholding from the reviewing Court any report by the Trial Examiner, the Board withheld information as to what the Trial Examiner thought the issues before him were.

Counsel for the Board refers to (Board's Brief, page 46), and has filed with this Court a copy of, the brief which counsel for the employers filed with the Trial Examiner in aid of his preparation of findings. That brief comprised 152 printed pages, and *we shall be glad if members of this Court will refer to it.* That brief does not contain a "point", a page, or a paragraph, of argument on the question of the abrogation of the contracts. On the contrary, it reflects throughout a realization that, however severely the CIO witnesses had attacked some of the labor practices, the regularity and validity of the *contracts* had not been put in issue by the Board. The brief prepared and submitted after the hearings ended will be searched in vain for any discussion of the question of whether the contracts were valid or of the propriety of their abrogation. On the contrary, the whole brief proceeded on the basis that the validity of the contracts had not been attacked. We quote from pages 135 and 136 of that brief:

> "The complaint here, as amended to the close of the trial, does not attack or question the respondents' *recognition* of the I. B. E. W. as collective bargaining agency, nor does it attack or question the respective collective bargaining agreements."
>
> "*No question of representation* as between the I. B. E. W., the C I O; and the independent Union formed last April, *is involved in this case, according to*

statements made in behalf of the Board (S. M. 190 and 521)." (Italics as in original.).

Under those circumstances and *in particular view of the fact that no question had been raised as to the validity of the contracts subsisting in behalf of 80 per cent of the employees,* counsel for the petitioners made the contention quoted on page 46 of the Board's brief. We believed then, and believe now, that it was soundly made.

The Board now says that it examined the brief which the employers submitted to the Trial Examiner to aid his preparation of findings. *If so, the Board was, by the statements above quoted from the brief, made fully aware that the case had been tried and closed on the part of counsel for the employers, upon the basis that "The complaint here, as amended to the close of the trial" did not "attack or question the respective collective bargaining agreements"* (Brief before Trial Examiner, page 135). The Board nevertheless gave the employers no occasion or opportunity to brief or argue any question as to the validity or abrogation of the contracts.[1]

As shown at page 6 of our principal brief, the form of complaint first served stated no charge against the I.B.E.W. under the Act; and no amendment or notice of amendment was ever served on the I. B. E. W. Counsel for the CIO alleges (United Brief, page 2), as the Board's return alleged (R. 1715), that counsel or representatives of the I. B. E. W. came to some of the hearings. The record of the hearings shows no such thing; but if it were true, we ask counsel for the Board to call attention to any day's

[1] The brief for the Board says (page 32) that "Petitioners' brief does not seriously question that this part of the order [for abrogation of the contracts] is within the powers of the Board and is supported by the findings and the evidence." The petitioners do most emphatically question each of these things, for the reasons stated by the Court below (R. 1745-1746), and for the further reason that the provisions of the contracts against all acts of interference with the employees' right to self-organization provide the strongest safeguard against interference with that right (R. 1395, fol. 4185).

proceedings from which any lawyer present would fairly have inferred that the abrogation of the contracts was in contemplation.

3

As to the Board's Attempt to Disassociate, and Then to Condone Severally, Its Numerous and Cumulative Violations of Due Process and "the Rudiments of Fair Play"

On pages 26 and 27 of our principal brief, we assembled and quoted the pointed criticism of the Board's procedure in several respects, as expressed by the Court below. The brief for the Board undertakes no apology or justification for these instances. In our principal brief (pages 70-84) we cited five specifications of action by the Board in the conduct of its proceedings against petitioners, which we urged as severally and cumulatively denying to the petitioners the full and fair hearing required by due process of law. The situation is not that some one or two of these instances transpired under explicable circumstances in a single proceeding; the fact here is that *all of these transgressions of due process were experienced cumulatively by the petitioners in a single proceeding.*

We have urged further that, in view of the interrelation of these instances of improper procedure, no part of the order of the Board should be accorded any judicial enforcement. Our position is essentially this: There is no process of judicial refinement by which these numerous denials of "the rudiments of fair play" could be disassociated from their composite consequences. By the same token, the order resulting collectively from such procedures should be denied enforcement in its every part.

The Board's brief offers no solution of this problem. Its effort seems to be chiefly to take up these numerous instances individually and to suggest, in the first place, that it is insufficient to justify a refusal to enforce the order and, in the second place, that it would not in any event justify a

refusal to enforce more than some part of the order to which the particular offense against due process is claimed by the Board to be related. In other words, the Board's concept denies, and fails to take any account of, the composite effects of the occurrence and recurrence of so many instances of improper conduct in a single proceeding, and fails also to give weight to the fact that the occurrence of so many instances of improper conduct in a single proceeding are the reliable indications by which its bias and pre-judgment can be determined. We submit furthermore, that the nature of each of these violations, the fact of their cumulative occurrence in a single proceeding, and the nature of the Board's apologies for them, leave no doubt that *the conduct of the Board was wilful in each of these respects and beyond the pale of judicial tolerance.*

The Board's brief condones the Board's *ex parte* instructions telephoned from Washington, D. C. to the Trial Examiner at the hearing on June 24th, requiring him to deny the petitioners' request for an adjournment and opportunity to prepare for and present their case on July 6th, except as it authorized the testimony of Mr. Carlisle. Such "remote control" was exercised although no member of the Board had been present at any of the hearings or heard any of the evidence. Its brief also approves the adherence of the Trial Examiner to those instructions by refusing to allow the petitioners to introduce evidence on the date of the final hearing (July 6th) notwithstanding the Board was allowed its omnibus amendment of its complaint on that date, to conform its complaint to all of its proof at the hearing, and the *petitioners specifically asked leave to call witnesses to meet those broadened issues* (R. 1312, 1313, 1316).

The Board argues that these and other of its violations of due process might have been corrected by interlocutory recourse to the Court under Section 10(f) of the Act, by motion to compel the Board to receive additional evidence,

etc. We renew our point that the Act was never intended to provide any *locus poenitentiae* for such arbitrary and unreasonable action. Furthermore, by what principle of due process could the Court ever *sustain* such unreasonable action? This Court should settle once and for all, we submit, the original and inherent illegality of such action, and end all opportunity to put a respondent to the unnecessary and unreasonable expenses of proceedings in the Court to correct such a deliberate denial of opportunity for a full and fair hearing.

We urge that the same considerations are equally applicable to the Board's unreasonable and arbitrary action in refusing to hear petitioners' witnesses who were actually in the hearing room on the last day of the hearings (July 6th). Furthermore, on the facts of this case, we submit that this refusal to hear these witnesses is undeniably symptomatic of such serious partiality of the Board that no known technique of the judicial process could ascertain the extent of its pervasiveness. We urge that neither the Court nor a respondent should be imposed upon by useless litigation to overcome such deliberate and unreasonable violation of right.

We also wish to renew our position upon the significance of the action of the Board in "transferring" the proceeding "to be continued" before itself. If, as the Board appears to contend in its brief (page 57), the combination of Sections 37 and 38 of its Rules gives the Board absolute discretion (1) to *initiate* proceedings against a respondent upon the basis and expectation that there shall be findings and a report of the Trial Examiner to which exceptions may be filed by the respondent (Section 32) *but* (2) the Board may at any time, even after the close of hearings, transfer the proceeding at its pleasure and *ex parte* and thereby obviate all such findings, report and opportunity for exceptions, including any opportunity to appear and be heard

before the Board, such combination should be outlawed by this Court.

By what possible principle of impartiality assured by due process of law may one respondent under the Act be granted and another respondent denied opportunity to be heard upon the findings and report of an Examiner—especially in a case like the present one, where the hearings have been held and closed before an Examiner. Such duplicity of procedure carries its illegality upon its face.

4

As to the Laying Off of the Six Men

The Board's brief seems to us to make no reply to our analysis of the *evidence* as to the laying off of the six men. The brief reiterates about the same version which was in the Board's findings which are here being contested; and we have shown that the evidence does not support the Board's version and that the Board's theory would essentially cripple the competent operation of a public utility enterprise such as that of the petitioners.

The Board's brief persists in the assumption that because these six men who were laid off were officers or members of what is now the CIO affiliate, they must have been laid off for that reason, rather than because of the enforced laying off of a substantial number of men because of decrease in the volume of construction and other work.

Inevitably, in such a process of reduction in forces, some members and officers of the CIO affiliate have been laid off, as have members and officers of the Brotherhood and of the Independent Union. *Hundreds* of members and officers of the Brotherhood Local Unions have been laid off for the same reasons.[1] There had been many lay-offs before

---

[1] In view of the repeated instances in which the Board's brief (*e. g.*, pages 4, 21, 23, 26) refers to publications outside the record and subsequent to it, we refer here to the fact that on November 10, 1937, *The New York*

these six men were laid off (R. 482, 563, 564, 1263, 1269, 1284); and at the same time, Mr. Dean, who laid them off, laid off two members of what the Board called the "Company Union" (R. 482, 564) and he failed to consider them for employment elsewhere because he knew that he "had a couple of hundred other men to let go" (R. 1283).

Dated: October 14, 1938

Respectfully submitted

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Times and *Herald-Tribune* stated that these Companies and the Brotherhood had agreed to arbitrate, under the contracts in force between them, the laying off of employees. *The total number involved in the lay-offs was 950, of whom 759, or nearly 80 per cent, were members of the Brotherhood.* The arbitration proceeding took place under the laws of the State of New York, and the decision of the arbitrators, as reported in the same newspapers on December 16, 1937, was unanimous. The neutral arbitrator was Dr. John A. Lapp, well-known labor arbitrator; and the representative of the Brotherhood was Dr. M. H. Hedges, labor adviser to the TVA, etc. The unanimous award of the arbitrators, which is of public record under the arbitration law of the State of New York, said, as to the fact that 759 out of the total of 950 laid off were members of the Brotherhood: "The Brotherhood made no claim that the lay-off of employees had been used in any instance 'for purposes of discrimination against any member of the Brotherhood' (Article IX). The reason why members of the Brotherhood were so large a percentage of the total number of employees laid off in October, was obviously that the International Brotherhood of Electrical Workers' membership constitutes a similar percentage of the total employees. The selection of the persons to be laid off was manifestly made without reference to, and without information as to, membership or non-membership in the Brotherhood." The arbitrators found unanimously that there had been no intended violation of the "seniority rule," and "no intended unfairness," in selecting the 754 Brotherhood members laid off. As to the foregoing, see *The New York Times* and *Herald-Tribune* for December 16, 1937.

APPENDIX

Summary and Refutation of Matters of Fact Mis-stated in the Brief for the United (CIO Affiliate and Intervenor)

The Mis-statements	The Record Facts
"In addition, the Consolidated System purchases immense quantities of supplies which come to it in interstate commerce and *it produces large quantities of by-products which go into interstate commerce,—the two items being of such magnitude as to substantially affect interstate commerce.*" (United Brief, page 23.)	The Board found to the contrary, as to the disposition of by-products (R. 72). The petitioners purchase and use materials and supplies which originate outside the State (R. 1366-1367), but no employee of the petitioners is engaged in their transportation in interstate commerce (R. 1368). The Court below found the petitioners were not even claimed to be engaged in "commerce" as defined in the Act (R. 1739).
"* * * Just when they [the so-called Local Unions numbered B-825, B-826, B-828, B-829, B-830, B-832, B-839] came into existence, does not appear clearly from the Record. *The first definite notice of their existence was acquired by the respondents when the employers sought to introduce the alleged contracts in support of their plea that the case had become moot. This did not occur until the hearing had been closed as far as the respondents were concerned,* and remained open only for the employers, for the special	This is completely error. The Board's first and principal witness (Mr. Straub, formerly head of the Employee Representation Plan of the Bronx Company, and later and now Organizational Director of Local 111 of the CIO affiliate), testified *on June 10, 1937,* that a petition for a local charter of the IBEW had been signed April 23, 1937 (R. 242, 245), and that Ganley became its president (R. 248). Straub testified on June 10th that he had attended a meeting of this local at No. 60 East 42nd Street (R. 273, 276).

purpose of adducing certain evidence which was not available at the time of the close of the hearing on June 24, 1937 (R. 1187)." (United Brief, page 3, note.) This would fix the date of the "first definite notice" as July 6th or, at the earliest, June 24th.

On June 9, 1937, the Board's counsel requested the production of the contracts with the IBEW (R. 868), and on June 16th the petitioners' counsel made a statement at the hearing as to the contents of these agreements (R. 870). The contract with Local Union B-829 was, on June 16th, marked for identification as Board's Exhibit No. 14 by the Board's counsel (R. 871, 1394). All of the contracts were "produced at the request of the Board" (R. v, x, xi). Testimony as to the existence of the Local Unions of the Brotherhood was given repeatedly during June, long before June 24th.

"* * * As already stated, these 'contracts' were not produced until after the close of the actual testimony taken at the hearings, and were offered by the respondents in evidence", etc. (United Brief, page 17, note.)

The falsity of this assertion is last above shown.

"In their briefs counsel for petitioners states that the so-called 'local unions' involved herein comprised about 30,000 of their employees out of a possible 40,000, *as if that were a proven fact in the Record.* * * * *This claim was made after the*

The Court below found as a fact, from the evidence, as to the Brotherhood, that "As of June 29, 1937, their membership was 30,000 out of 38,000 eligible employees" (R. 1745). The details of the proofs are in evidence as Respondents'

evidence had been closed, and there was, therefore, no way of contradicting or disputing it." (United Brief, page 19, note.)

Exhibit No. 16 (R. 1418). This exhibit was received in evidence *without objection* from counsel for the Board (R. 1212), who did not cross-examine as to it or offer any rebuttal. The Board's decision did not question the accuracy of the facts shown in Exhibit No. 16 (R. 101).

"* * * Immediately after the announcement by this Court of its decision in the *Jones & Laughlin* case, the petitioners herein got into communication with each other, and this resulted in an announcement by the Consolidated System *to its employees* on April 20, 1937, that Consolidated "recognized' the I.B.E.W. as *the exclusive* bargaining agency for all of its employees, numbering some 40,000." (United Brief, pages 24-25.)

The pertinent factor was that after this Court had upheld the type of legislation represented by the National Act, *the enactment of a State Labor Relations Act became imminent* (R. 1207). The announcement was not at all as stated in the CIO brief. Testimony of Mr. Carlisle as to his negotiations with the IBEW showed that only the latter's members were to be represented (R. 1395). The contracts so provided specifically (R. 1395). On his cross-examination, Mr. Carlisle was asked whether under his understanding of the situation the majority of employees would be barred from being represented if the IBEW only represented a minority. He said (R. 1235):

"A. *No, I wouldn't say that,* but I would say that we have entered into this

agreement and we can consider it a complete compliance with the spirit of the law."

"* * * The Record shows that the agreement of 'recognition' included an agreement for the continuation of the company unions." (United Brief, page 26.)

Neither the contracts nor the record showed or could show any such thing. No reference to the record is cited. The Board dismissed the charge of "domination" and "financial support" (R. 130).

"Assuming, however, that contracts in fact existed, the only parties to these contracts under the laws of New York were the employers and the so-called 'local unions.'" (United Brief, page 28.)

Examination of the contracts show that they were executed by both the IBEW and its local unions, and the latter acted by committees elected by the membership (R. 1394-1405). The Court below upheld the IBEW as a party "aggrieved" and entitled to litigate the abrogation of its contracts.

Statements of Fact in the Board's Brief

THE BOARD'S BRIEF

"* * * On May 17, 1937, petitioners, appearing specially, filed a motion to dismiss the complaint on jurisdictional grounds (R. 19-33)." (Board's Brief, page 4.)

THE RECORD FACTS

The nature of this motion is correctly stated at page 8 of our principal brief as follows: "Immediately after the complaint of the Board had been served, the petitioners appeared specially and on May 17th petitioned the Board (R. 19-33) for a hearing 'directly by the Board' on the question of

jurisdiction and on 'any further proceedings herein' (R. 21, 32), and asked also that the questions of jurisdiction be heard separately and before hearing upon the various charges set forth in the complaint (R. 21, 32)."

"* * * The petitioners herein, in their Memorandum in Support of Motion for a Stay, * * * have acknowledged (p. 5) that 'The I B E W was given notice of the pendency of the proceedings'." (Board's Brief, page 4.)

As counsel for the Board has thus referred to the contents of a paper not before this Court, we quote what the memorandum referred to did say; viz., that "The I B E W was given notice of the pendency of the proceeding, with a copy of the first form of the complaint, but was not made a party and never participated in the proceeding." As shown at page 6 of our principal brief, the form of complaint first served stated no charge against the IBEW under the Act; and no amendment or notice of amendment was ever served on the IBEW.

"Petitioners' claim to a denial of due process insofar as Paragraph 2 of the order is concerned is based upon the refusal by the Board to hear the proffered testimony of two witnesses." (Board's Brief, page 50; see also, pages 2 and 3.)

There is no statement or reference to the application made on behalf of the petitioners on July 6, 1937, for an opportunity to present proof to meet the issues raised by the third amendment allowed on the last day of the hearing (R. 1312, fol. 3935; R. 1313, fol. 3939; R. 1316, fol. 3946). Counsel for

the petitioners, in support of their objection to the arbitrary curtailment of respondent's case, said (R. 1312): "I call your attention also to the fact that over my objection this morning, your Honor allowed the Board, the government, to amend its complaint to conform to proof. *Now, I assert an absolute right under those circumstances to present proof and meet such changes and such issues and facts as your Honor allowed.*"

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In the Supreme Court of the United States

OCTOBER TERM, 1937

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ITS AFFILIATED COMPANIES, BROOKLYN EDISON COMPANY, INC., NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 916

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ITS AFFILIATED COMPANIES, BROOKLYN EDISON COMPANY, INC., NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 1737–47) has not yet been reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 65–130) have not yet been reported.

JURISDICTION

The decree of the court below (R. 1748) was entered on March 21, 1938. The petition for a writ of certiorari was filed and served on April 2, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10, paragraphs (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Act may validly be applied to a public utility system engaged in the business of distributing electric energy, gas, and steam wholly within the State of New York, which receives the major portion of the raw materials, supplies, and equipment used in its production operations from states other than New York, and which sells substantial quantities of electric energy, gas, and steam to various important private and governmental enterprises engaged in interstate and foreign commerce, including agencies and instrumentalities of such commerce, which are dependent in their operations upon the uninterrupted supply by petitioners of electric energy, gas, or steam.

2. Whether petitioners were denied due process of law by reason of the fact:

(a) That they were ordered to cease and desist from giving effect to certain collective bargaining contracts executed after the complaint was issued.

the invalidity of which was not in terms asserted at the hearings, where the contracts, having been admitted in evidence, were found to have been executed in continuation and culmination of the unlawful coercion of employees charged in the complaint, and where petitioners themselves introduced evidence concerning the contracts and raised the issue of their effect by claiming that their execution had rendered the charge of coercion moot;

(b) That no Intermediate Report was made by the Trial Examiner;

(c) That the Board declined to permit certain of petitioners' witnesses, who were available and could have been produced at the close of the Board's case, to testify at an adjourned hearing subsequently held for the sole purpose of taking the testimony of certain other of petitioners' witnesses theretofore unavailable, where petitioners were afforded the opportunity to call all available witnesses prior to such adjourned hearing and did not thereafter pursue their statutory right to apply to the court below for leave to adduce such additional testimony.

STATUTE

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*) are set forth in the Appendix hereto.

STATEMENT

Pursuant to a charge duly filed by the United Electrical and Radio Workers of America, a labor organization (herein called the United) (Bd. Exh. 1, R. 4–6), the National Labor Relations Board, by its Regional Director at New York City, issued its complaint against petitioners on May 12, 1937 (Bd. Exh. 1, R. 7–16). In addition to certain jurisdictional allegations, the complaint, as thereafter amended (R. 40–1, 164–5, 405–9, 525–6), alleged that petitioners had employed and were employing industrial spies for the purpose of ascertaining the union activities of their employees; that petitoners had discharged and thereafter had refused to reinstate, certain named employees because of their union activities; that petitioners had contributed and were contributing financial and other support to the International Brotherhood of Electrical Workers, a labor organization (herein called the Brotherhood), and had coerced and were coercing their employees to join or assist the said Brotherhood; and that by all of the foregoing acts, petitioners had engaged and were engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7) of the Act (Bd. Exh. 1, R. 7–16).

Copies of the complaint and of a notice of hearing thereon were duly served upon petitioners; and the United and the Brotherhood were given notice

thereof [1] (Bd. Exh. 1, R. 16–18). Petitioners, appearing specially, filed a motion to dismiss the complaint on jurisdictional grounds (Pet. Exh. 3, R. 19–33).[2] Pursuant to an amended notice of hearing served upon petitioners, with notice to the United and the Brotherhood (Bd. Exh. 1; R. 34–6), a hearing was held on June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, at New York City, before a Trial Examiner duly designated by the Board (Bd. Exh. 1, R. 37). On June 16, 1937, during the hearing, petitioners filed an answer to the complaint as amended which reserved their jurisdictional objections, denied the alleged unfair labor practices, and set forth certain affirmative defenses to the Board's jurisdiction (Pet. Exh. 7, R. 42–63).

At the close of the Board's case the Trial Examiner granted petitioners' motion to amend its answer to include, as a separate defense, allegations that certain contracts executed by petitioners and certain locals of the Brotherhood had rendered the issues moot (R. 1200–01).

Petitioners' counsel then requested an adjournment until July 6, 1937, to enable him to prepare

[1] The sufficiency of the notice to the Brotherhood is challegend in the petition for certiorari (No. 957) filed by the Brotherhood to secure a review of the decision of the court below. The petitioners herein in their Memorandum in Support of Motion for a Stay, filed in the court below, have acknowledged (p. 5) that "The IBEW was given notice of the pendency of the proceeding."

[2] This motion, later renewed, was denied (R. 1198–1201). Other rulings during the hearing not material here are not discussed.

petitioners' case, and in particular to secure the testimony of Floyd L. Carlisle and and Harold Dean, both of whom were said to be unavailable and whose testimony was asserted to be indispensable (R. 1186–92). The sole reason offered for not calling witnesses at the close of the Board's case was that the Board had completed the presentation of its case sooner than had been anticipated by petitioners' counsel (R. 1188), although counsel for the Board had announced on June 23 that the Board's case would be completed on the following day (R. 1102). The Trial Examiner, on June 24, after having offered to recess the hearing until June 25 for the purpose of receiving the testimony of any of petitioners' witnesses who were available (R. 1311), granted the adjournment to July 6 for the purpose of receiving the testimony of Carlisle, who was said to be abroad, and reserved decision until the hearing was resumed on July 6 whether the testimony of Dean, who was said to be in Milwaukee, and of other witnesses, would be received (R. 1192).

Pursuant to permission granted, petitioners presented this matter directly to the Board by letter dated June 28, 1937 (Pet. Exh. 25, R. 1463–6). The Board by reply letter, dated July 2, 1937, stated that it would permit both Carlisle and Dean to testify on July 6, but would not permit any other witness then to testify on the ground that such available witnesses should have been produced upon completion of the Board's case (Pet. Exh.

25 (a), R. 1467). After the testimony of Carlisle and Dean had been received on July 6, 1937, the Trial Examiner, in accordance with the Board's directions, refused to permit a witness called by petitioners to testify concerning the discharge of Stephen L. Solosy (R. 1309–13). Petitioners then made an offer of proof concerning the discharge of Solosy and of Philemon Ewing (R. 1314–5). As to Ewing no discriminatory discharge had been alleged nor did the Board make any order respecting his discharge. No offer of proof as to any other matter was tendered by petitioners (R. 1316). On July 15, 1937, petitioners submitted a brief (R. 71).

By order of the Board, dated September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 37, of the National Labor Relations Board Rules and Regulations, Series 1, as amended (R. 64). No oral argument was had, none having been requested by petitioners. On November 10, 1937, the Board issued its decision affirming the rulings of the Trial Examiner and setting forth its findings of fact, conclusions of law, and order (R. 65–130). The facts, in brief, as disclosed by the Board's findings, are as follows:[3]

[3] The references in the following statement are to the Board's findings, which summarize the evidence in ample detail. To make reference to the extensive supporting evidence in the lengthy record would burden the Court unnecessarily, particularly since petitioner does not contest the sufficiency of the evidence in any specific respect.

Petitioners operate as a system under a unified ownership and management. The system is engaged in the business of supplying electricity, gas, and steam to consumers in New York City and Westchester County, New York. In 1936 the system supplied 97.5 per cent of the total electric energy sold in New York City and practically all of the electric energy sold in Westchester County. It supplied 55.3 per cent of the total gas sold in New York City. It is the only public utility supplying gas in Westchester County; and is the only central-station steam utility in New York City.* As of April 17, 1937, the system employed 42,101 employees. The total annual pay roll for 1936, including annuities and separation allowances paid, was $81,891,990.40 (R. 72–77).

The major portion of the raw materials, supplies, and equipment used in the production of all the electric energy, gas, and steam sold by petitioners moves to their plants from states other than New York. Coal and oil are the principal raw materials. All but an insignificant portion of the

* In 1936 the system generated and purchased 6,038,989,792 kilowatt-hours of electric energy and sold 5,130,976,460 kilowatt-hours. The total revenue from the sale of electric energy amounted to $180,448,596.19. During the same period the system produced 39,286,022,000 cubic feet of gas and sold 38,016,134,000 cubic feet. The total revenue from the sale of gas amounted to $41,163,261.69. The total revenue from the sale of steam during 1936 was $10,761,341.04. The revenue from the sale of coal and oil by-products was $3,485,338.01. This revenue is treated as an abatement of production expenses (R. 76).

approximately 5,000,000 tons of coal utilized in 1936 was mined in other states and shipped directly to petitioners' plants, where it was unloaded and handled by petitioners' own equipment and employees. All of the approximately 115,000,000 gallons of oil consumed in that year was received in interstate commerce. Substantial quantities and proportions of cable, copper, and other materials and supplies are purchased from suppliers located outside the state (R. 77–8).

The electric energy, gas, and steam produced by petitioners is sold and supplied to various important businesses engaged in interstate and foreign commerce, all of which are vitally dependent for their existence and operation upon the use of such electric energy, gas, and steam. Thus, petitioners supply the electric energy used by various interstate railroads for the operation of interstate trains and interstate passenger and freight terminals. In 1936 petitioners supplied a total of 261,608,501 kilowatt-hours of electricity to the New York Central Railroad, the New York, New Haven and Hartford Railroad Company, and the Hudson and Manhattan Railroad Company. The steam supplied is used to operate compressors for the switches in the interstate railroad tunnel of the Pennsylvania Railroad under the North River. Petitioners also supply electricity to the Port of New York Authority for the operation of its terminal and the Holland tunnel (R. 78–80). In the fields of interstate and foreign communication, equally de-

pendent upon petitioners are the Western Union Telegraph Company, the Postal Telegraph Company, the New York Telephone Company, RCA Communications, Inc., and Columbia Broadcasting System, Inc. In navigation, petitioners supply energy used in the operation of piers, slips, wharves, and terminals of steamship companies, and of interstate ferries. Related service is furnished lighthouses and other devices in aid of navigation in New York harbor (R. 80–2). Into a miscellaneous but important class of customers fall, *inter alia*, the following: the post-offices and the United States Barge office and Custom Houses; the Floyd Bennett Air Field; the Dow-Jones and Company, Inc., ticker service; the New York Stock Exchange; and the New York Times; all of which depend upon petitioners for electricity for their interstate operations and activities (R. 80–2). In addition, the numerous commercial and manufacturing enterprises engaged in interstate commerce in New York City are dependent upon petitioners for the power and light necessary to carry on their business.

With respect to the unfair labor practices, the Board's findings establish that in 1933, as a means of purported compliance with the collective bargaining provisions of the National Industrial Recovery Act, petitioners conceived and initiated, and thereafter entirely supported, certain Employee Representation Plans (R. 85–91). After the pas-

sage of the present Act petitioners employed the Plans as a means of preventing free self-organization among their employees. As late as April 1937, when the United was conducting a campaign for membership among petitioners' employees, petitioners countered with their own campaign to force the employees to pledge adherence to the Plans (R. 90).

When the April 1937 decisions of this Court sustaining the Act were rendered, petitioners formally abandoned the Plans and simultaneously had recourse to the Brotherhood. In brief, after two hasty conferences with the International President of the Brotherhood, and the submission of a contract in which it was proposed that the Brotherhood be recognized as the representative of its members, but without seeking to ascertain the desires or views of their employees upon the subject, and without making any inquiry as to what number of their employees belonged to the Brotherhood, petitioners precipitately announced at a specially called meeting that they had decided to recognize the Brotherhood. Despite vigorous protest by the employees, and in complete disregard of a request by the United for a conference, petitioners immediately dispatched a letter to the International President recognizing the Brotherhood. At this meeting petitioners' principal executive explained petitioners' course of action to the employees on the ground that labor organizations had become neces-

sary evils, in view of this Court's decisions and of legislation similar to the Act then pending in the New York State Legislature, and that as between the United and the Brotherhood petitioners preferred the latter (R. 91–93).

According to plan, there were then quickly set up throughout petitioners' system seven Brotherhood locals, and there was set in motion a vigorous campaign to intimidate, influence, and coerce the employees into joining the Brotherhood. Brotherhood organizers were permitted to solicit membership in the plants during working hours, while United organizers were turned out of the buildings. Various of petitioners' officials expressed their views in favor of the Brotherhood. Employees were solicited to join the Brotherhood by department heads, foremen and other employees engaged in supervisory capacities, and the solicitation was accompanied by admonitions and even threats. Brotherhood dues were collected on petitioners' premises and Brotherhood organizers were permitted to occupy offices of foremen for that purpose. Officers of the Employee Representation Plans, who had now become officers of the Brotherhood locals, were allowed to continue in the exercise of their prerogatives on behalf of the Brotherhood during working hours, using petitioners' offices and secretarial services, utilizing their expense accounts, and being paid their regular salaries nonetheless (R. 93–99).

Following the establishment of the Brotherhood locals and the obtaining of a membership therein in th manner above described, petitioners between May 28 and June 16 entered into seven substantially similar contracts with the seven Brotherhood locals, thus executing the last act in completion of the *coup* determined upon at the outset as a means of controlling the selection by their employees of representatives for collective bargaining purposes (R. 99–102). Although these contracts recognized the Brotherhood as the representative of its members and were applicable only to such members, petitioners construed them as exclusive collective bargaining agreements and freely admitted that they would not bargain collectively with any other labor organization during the existence of these contracts (R. 100–102).

In addition, the Board found that petitioners had employed industrial spies and operators for the purpose of uncovering the union activities of their employees (R. 103–105), and that petitioners had discharged six employees because of their union activity and had thereby discriminated against them in regard to hire and tenure of employment (R. 106–125). All of the aforementioned acts, the Board found, tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof (R. 125). The Board concluded that petitioners had engaged in unfair labor practices affecting commerce, within the meaning of Section

8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act. The Board dismissed the complaint in so far as it alleged violation of Section 8 (2) of the Act (R. 127).

Upon the basis of these findings, the Board in addition to requiring petitioners to reinstate to their former positions with back pay six named employees discharged for union activity, directed petitioners, in substance, to cease and desist (a) from discouraging membership in the United by any manner or means of discrimination, or encouraging membership in the Brotherhood by any manner or means of persuasion, intimidation, or coercion, (b) from permitting any representatives of the Brotherhood or any other labor organization to engage in union activities during working hours or on petitioners' property unless like privileges were granted the United and all other labor organizations of their employees, (c) from permitting petitioners' employees who were officials of its Employees' Representation Plans to use petitioners' time, property, and money on behalf of the Brotherhood or any other labor organization, (d) from employing detectives or other means of espionage to investigate their employees' union activities, and (e) from giving effect to their contracts with the Brotherhood or recognizing the Brotherhood as the exclusive representative of their employees (R. 127–30).

On November 18 and 19, 1937, petitioners and the Brotherhood,[5] respectively, filed in the court below their separate petitions to review and set aside the Board's order under Section 10 (f) of the Act (R. 1473–1691). The Board answering the petitions prayed for the enforcement of its order in full (R. 1691–1725). Petitioners replied to the Board's answers (R. 1726–35). On petition filed, the United was permitted to intervene (R. 1735, 1737). On March 14, 1938, the court below rendered an opinion upholding the Board's order in full (R. 1737–47). A decree of enforcement was entered on March 21, 1938 (R. 1748).

ARGUMENT

INTRODUCTION

The petition should be denied because the single important question raised by petitioners is governed by decisions of this Court. As the court below held, the jurisdiction of the Board to issue the challenged order is fully supported by the principles declared by this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, and companion cases at the last term—principles recently reaffirmed and applied in *Santa Cruz Fruit Packing Co.* v. *National Labor Rela-*

[5] Although the Brotherhood had notice of the proceeding before the Board, it did not intervene and become a party to that proceeding (Bd. Exh. 1, R. 16–8, 34–6). Its participation in the proceeding before the court below was as a "person aggrieved" under Section 10 (f) of the Act.

tions Board, decided March 28, 1938. The procedural questions raised by petitioners are without substance and are unimportant. As to the first, the question of the effect of petitioners' contracts with the Brotherhood had been put in issue by petitioners themselves, and the Board was amply warranted in passing upon the validity of the contracts and in ordering petitioners to cease and desist from giving them effect. The complaint charged petitioners with unlawful coercion of employees in violation of Section 8 (1) of the Act, and the proof established that the contracts were executed, after issuance of the complaint, in continuation and culmination of the coercion charged; the issue of coercion in all its aspects petitioners had full and fair opportunity to meet. As to the second question, the absence of a report by the Trial Examiner entails no denial of due process. *Morgan* v. *United States*, 298 U. S. 468. Nor, finally, is any such question raised by the discretionary refusal of the Board to grant a two-week adjournment of the hearing to take the testimony of witnesses available when the adjournment was requested. In any event, petitioner is foreclosed from raising any such question here because of its failure to avail itself of its clear statutory right to apply to the court below for leave to adduce testimony from the witnesses in question.

I

THE HOLDING OF THE COURT BELOW THAT THE ACT MAY VALIDLY BE APPLIED TO PETITIONERS IS IN ACCORDANCE WITH THE PRINCIPLES APPROVED BY THIS COURT AT THE LAST AND DURING THE CURRENT TERM; THOSE PRINCIPLES ARE SO FULLY CONTROLLING OF THE PRESENT CASE AS NOT TO REQUIRE REVIEW BY THIS COURT

The court below, upon a consideration of the facts of this case, properly found the petitioners' operations to fall within the principles definitive of the jurisdictional scope of the Act as announced by this Court at the last term. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58. The correctness of the court's holding is confirmed by the decision of this Court at the present term in *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, decided March 28, 1938.

The test of jurisdiction laid down in the *Jones & Laughlin* case is satisfied in any case in which "stoppage of * * * operations by industrial strife" would result in substantial interruption to or interference with the free flow of interstate commerce (301 U. S. at 41). Where such interruption would occur, the Court pointed out, unfair labor practices on the part of employers, shown by long experience to be "prolific causes of strife," have a

"close and intimate relation" to interstate commerce and are subject to federal regulation under this Act (301 U. S. at 42, 43). Upon "the facts as to respondent's enterprise" in that case, the Court held that a stoppage of its manufacturing operations would have "a most serious effect upon interstate commerce"—one which "would be immediate and might be catastrophic" (301 U. S. at 41). The effect upon interstate commerce there considered, however, was moderate in comparison with the far-reaching and instantaneous effect which, it has been established, a cessation of petitioners' operations would have upon a host of interstate activities.

The major portion of petitioners' raw materials, supplies, and equipment come from states other than New York, where petitioners' operations are carried on (*supra*, pp. 8–9). In 1936 petitioners consumed nearly 5,000,000 tons of coal and 115,000,000 gallons of oil which had been brought from without the State. Apart from all else, these huge movements in interstate commerce and the need of protecting them from interruption or cessation are sufficient to bring petitioners within the jurisdictional scope of the Act under the test laid down in the *Jones & Laughlin* case and reiterated in the *Santa Cruz* decision.

It is of no significance that petitioners' operations in interstate commerce relate to incoming raw materials rather than to outgoing finished products. The decisive principles recognize no distinction be-

tween effects upon incoming or upon outgoing commerce, or effects upon both. In declining to accept a contrary contention in the *Santa Cruz* case, this Court reiterated its pronouncement in the *Jones & Laughlin* decision that:

> The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to injurious actions springing from other sources.

But a cessation of petitioners' operations would have an effect upon interstate and foreign commerce far more immediate and important than the effect represented by the interruption of the interstate movement of petitioners' raw materials. Without more, stoppage of petitioners' operations would instantaneously block all interstate transportation to and from the nation's foremost commercial center on three interstate railroads—the New York Central, New York, New Haven, and Hartford, and Hudson and Manhattan—and all interstate and foreign communication by radio, telegraph, or telephone. Interstate ferries, tunnels, steamship companies plying in the foreign and coast-wise trade, and even the mails, all would be substantially crippled for lack of the electrical power used in the operation of their piers, wharves, terminals, and tubes. Devices in aid of navigation in and out of the port of New York would likewise

cease functioning. And the myriad of other enterprises engaged in interstate and foreign commerce in the area served by petitioners, some of which have previously been named (*supra*, pp. 9–10), would be as effectively forced to curtail or abandon their operations, both for lack of power necessary for their plants and equipment and by the stalling of the agencies and instrumentalities of interstate and foreign commerce necessary to the conduct of their affairs.

Plainly the court below, in heeding the "result upon commerce of a labor dispute between the petitioners and their employees," properly held that the effects of such a dispute cannot be regarded as "indirect and remote" (R. 1741). To have held otherwise would have been to disregard the injunction of this Court in the *Jones & Laughlin* case that such effects must be weighed in the exercise of "a judgment that does not ignore actual experience" (301 U. S. at 42.)*

In opposition to these plain bases of the Act's application to their operations, petitioners contend (1) that they are engaged "primarily and exclusively in local activity" (pet., p. 20); (2) that

* See the evidence of the serious effect of a short circuit at petitioners' Hell Gate generating station on January 15, 1936 (Bd. Exh. 2, R. 1357–8). At page 106 of the brief submitted by petitioners to the Board, July 15, 1937, it was admitted that: "In a delicate and intricate mechanism such as respondents' generating and distributing systems, one * * * employee * * * may cause a suspension of the service on which millions of people depend."

even if a stoppage of their operations would have the immediate and obstructive effects upon interstate and foreign commerce described above, the local effects would be greater and that, therefore, petitioners should be subject to regulation solely by the State of New York (pet., pp. 21–22); and (3) that the commerce which a cessation of their distribution operations would obstruct is that of other enterprises (pet., pp. 12–13).

None of these contentions has merit. The first is advanced in complete disregard of the fact that petitioners' purchases and receipts of huge quantities of raw materials are transactions unquestionably in interstate commerce.[7] Cf. *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Local 167* v. *United States*, 291 U. S. 293.

Petitioners' second contention is similar to that made and rejected in the *Santa Cruz* case. This Court has frequently declared that the federal power is paramount, and that where it cannot be exercised to protect interstate commerce without at the same time protecting intrastate transactions inseparable from the interstate, it may be applied to the whole. *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, decided March 28, 1938; *National Labor Relations Board* v. *Jones*

[7] Especially inaccurate and misleading is the repeated assertion by petitioners that they "are concededly not engaged in 'commerce' as defined in the Act" (brief, pp. 10, 12).

& Laughlin Steel Corp., 301 U. S. 1; *Second Employers' Liability Cases*, 223 U. S. 1, 51; *The Shreveport Case*, 234 U. S. 342, 251; *Minnesota Rate Cases*, 230 U. S. 352; *Wisconsin Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 588.

Petitioner repeatedly suggests that it would be more appropriate for their labor relations to be governed by the New York Labor Relations Act. But the fact that New York has enacted a statute similar to the federal law is irrelevant to the question of federal power. The power of Congress to prevent serious interruptions to interstate commerce must be the same in all the states; whether that power should on occasion yield to state action under similar state legislation is entirely a matter of legislative policy and not of constitutional law.

Nor is it material that the interstate and foreign commerce which a cessation of petitioners' distribution operations by industrial strife would curtail and block is "carried on by others" (brief, p. 19). That "it is the effect upon commerce, not the source of the injury, which is the criterion" of the exercise of the commerce power, and that the power may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten" it, this Court has repeatedly made clear. As in the *Santa Cruz* case, the sole question here presented is whether "the unfair labor practices involved have * * * a close

and substantial relation to the freedom of interstate commerce from injurious restraint * * *." Formalities of ownership and title are beside this issue. It is commerce, not the commerce of particular enterprises, with which the Act and the commerce power are concerned.[8] Here, as has been shown, cessation of operations at petitioners' plants would instantaneously stop a substantial portion of all the interstate commerce centered about New York City.

Since the Act may validly be applied to prevent obstruction to interstate commerce, and since the cessation of petitioners' operations because of industrial strife occasioned by unfair labor practices would constitute such an obstruction in catastrophic degree, the holding of the court below, conforming in all respects with principles consistently declared by this Court to be applicable, presents no question of jurisdiction warranting review here.

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[8] An incident in petitioners' own experience graphically illustrates the point under discussion. In 1936 petitioners took over two generating stations theretofore operated by the New York Central Railroad (R. 1246). At the time that these stations were being operated by the railroad, no one would deny that an interruption of their service would constitute a direct and serious effect upon interstate commerce. In no respect whatever has that relationship been altered by the technical change in ownership. The "work done" and "its relation to interstate commerce" is the same. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 557.

II

THE BOARD'S PROCEDURE IN THIS CASE WAS ENTIRELY PROPER; PETITIONERS' CLAIMS THAT THEY WERE DENIED DUE PROCESS ARE WITHOUT MERIT AND REQUIRE NO REVIEW BY THIS COURT

A. *Paragraph 1 (f) of the Board's Order Requiring Petitioners to Cease and Desist from Giving Effect to their Collective Bargaining Contracts Was in all Respects Valid and Proper Under the Act*

Petitioners' attack upon the validity of Paragraph 1 (f) of the Board's order, requiring them to cease and desist from giving effect to their contracts with the Brotherhood, is without substance. Petitioners apparently do not question, and could not successfully question, that this part of the order is supported by the findings and the evidence, and that, being so supported, it is authorized by the Act.[9] The Board found that permeating all of the petitioners' coercive conduct was the illegal purpose to force the employees into joining

[9] Question (7) of the "questions presented" (pet. 7, p. 11), which is the only one relating to this aspect of the order, deals solely with the charge that petitioners did not have a proper hearing. It seems plain that the fifth specification of error (*id.* 17) is intended to have no broader scope. The reasons relied on for the granting of the writ (*id.* 12–15) contain no reference to any question concerning the contracts. In the petition for certiorari (No. 957) to review the decision of the court below filed by the Brotherhood, and its local unions, the substantive validity of this part of the Board's order is challenged.

the Brotherhood to the exclusion of the United or of any other labor organization. A series of uncontested findings (see pp. 11–13, *supra*) compel the conclusion that the contracts were not only a part but the culminating objective of this unlawful campaign to stifle the free inclinations of the employees in their choice of representatives. Such contracts are illegal. *United States* v. *Reading Co.*, 226 U. S. 324, 357; *Swift & Co.* v. *United States*, 196 U. S. 375, 396; *Aikens* v. *Wisconsin*, 195 U. S. 194, 205, 206; *Schenck* v. *United States*, 249 U. S. 47, 52; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 465–466.[10] In these circumstances it was "an inference of fact to be drawn by the Board from the evidence reviewed in its subsidiary findings" (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, decided February 28, 1938) whether the contracts, if continued in effect, would secure petitioners in the enjoyment of illegal benefits procured by their violation of Section 8 (1) of the Act, and would irreparably injure the employees in the exercise of their rights guaranteed by Section 7 of the Act. The Board's conclusion (R. 103) that Paragraph 1 (f) of the order was

[10] In the *Reading* case this Court held with respect to analogous circumstances under the Sherman Act:

"It is not essential that these contracts considered singly be unlawful as in restraint of trade. So considered, they may be wholly innocent * * *. But a series of such contracts, if the result of a concerted plan or plot between the defendant * * * would come plainly within the terms of the statute, and as parts of the scheme or plot would be unlawful."

necessary "to establish conditions for the exercise of an unfettered choice of representatives" is clearly reasonable as an inference of fact The decisions in the *Greyhound* cases are ample authority for the validity of the order as a matter of law.[11]

The grounds of petitioners' attack upon Paragraph 1 (f) of the order are procedural only. It is urged that the question of the validity of the contracts was not properly raised in the complaint or at the hearings, and that the order, therefore, deprives them of their property without due process of law. This contention is without merit.

The complaint specifically charged petitioners with having violated Section 8 (1) of the Act by coercing their employees to join the Brotherhood (R. 15). Petitioners were thus unmistakably informed that their relationship with the Brotherhood was claimed to have been tainted by violation of the Act, and was to be the subject of investiga-

[11] It should be noted that the order does not preclude the possibility of the Brotherhood representing, and making contracts for, the employees after the effects of the petitioners' illegal interference have been cured by enforcement of the Board's order. Under the circumstances presented to it, however, the Board could reasonably infer that the contracts constitute an effective bar to a free choice, and that not until the order is enforced and the obstruction of the contracts removed will the employees be able freely to exercise their statutory right to select any collective bargaining agent they desire, including, of course, the Brotherhood. Until the effects of the unfair labor practices have been dissipated, claims of membership on behalf of the Brotherhood are, of course, immaterial.

tion at the hearings.[12] The the hearings it was brought out that the contracts were made for the purpose of throttling free self-organization and were one of the means of coercion utilized by petitioners in violation of this Section—indeed, that they were the culmination and the fruit of the coercion. Clearly it was not necessary that the complaint should specify in advance the details of the methods adopted by petitioners to violate the Act; it was the purpose of the hearings to inquire into those details. Nor is it a function of a complaint under the Act to declare the legal consequences which may attach to violations of the Act.

It would thus plainly have been proper for the Board, even over the objection of petitioners, to introduce evidence concerning the contracts and, in deciding the issue of coercion, to pass upon their validity and effect. In point of fact, however, petitioners themselves introduced evidence concerning the contracts, and raised the issue of their effect, amending their answers so as to set them

[12] Paragraph 22 of the original complaint which charged that petitioners had coerced their employees into joining or assisting the Brotherhood, alleged that this conduct was an unfair labor practice within the meaning of Section 8 (1) of the Act. It is true that Paragraph 23, which contained the express allegation that the activities enumerated in preceding paragraphs affected commerce, omitted to refer to Paragraph 22. But this omission—which would have rendered the paragraph entirely superfluous and meaningless if it were given any significance whatever—was corrected by amendment on June 14, before the hearing was far advanced.

up as a defense (R. 71). All of the contracts, it is to be recalled, were executed after the issuance of the complaint which questioned the relationship between petitioners and the Brotherhood. Three of the contracts were executed, and all were amended, after the hearings had actually begun and evidence had been introduced concerning petitioners' coercion of their employees to join the Brotherhood. Having thus attempted to cement their questioned relationship with the Brotherhood in the face of the formal charges pending against them, petitioners came before the Examiner and asserted (R. 1200–1201) that execution of the contracts had rendered moot the issue of coercion. Because of the introduction of this defense, if for no other reason, the question of the effect and hence of the validity of the contracts was necessarily before the Board.

Petitioners complain that counsel for the Board did not at the hearing expressly assert the invalidity of the contracts. Apart from the fact, as just stated, that petitioners' own defense involved this question, the whole course of the proceedings necessarily directed attention to it. The great part of the testimony—substantially all of it except that relating to the discharges and to the use of labor spies [12]—bore directly upon the issue of coercion

[12] There was also an issue of contributing financial or other support to the Brotherhood in violation of Section 8 (2) (not of domination of the Brotherhood, as the peti-

of employees in violation of Section 8 (1). The question of the effect of the contracts—involving as it did the relief to be accorded if the charge were sustained—was integrally bound up in this issue, which petitioners had full and fair opportunity to meet. In such circumstances it is idle to contend that petitioners were surprised when the Board inquired into the contracts and issued an order respecting them. Even if petitioners had been surprised, moreover, their remedy would not be a ruling defeating any order respecting the contracts, but an opportunity to present fresh evidence and argument concerning them. Neither in the court below nor in the petition in this Court have they suggested that any evidence exists which they were misled into failing to introduce. If petitioners had such evidence, they were free to apply to the court below for leave to adduce it and to present argument concerning it, which they did not do.

In these circumstances it is plain that no question worthy of review by this Court is presented; petitioners themselves, it is to be noted, do not advert to the question as one of the "reasons relied on for the issuance of the writ" (see Pet., pp. 12–15).

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tion, pp. 8, 11, 23, erroneously asserts), but this issue did not bulk large in the evidence, and the charges under subdivision (2) were dismissed without prejudice by the Board (R. 130).

B. *The Transfer of the Proceedings to the Board in Washington, Before Filing of an Intermediate Report by the Trial Examiner, Raises no Constitutional Issue*

Petitioners next contend that they were denied due process of law by reason of the fact that at the conclusion of the hearings before the Trial Examiner, no Intermediate Report was filed by the Trial Examiner, but the proceeding was transferred by order of the Board and continued before it in Washington. While the usual practice of the Board is to permit the Trial Examiner to file an Intermediate Report, it is clear that occasional departures from this practice, fully according with Sections 37 and 38 of the Board's Rules and Regulations—Series 1, as amended, raise no question of infringement of statutory or constitutional right. *Morgan* v. *United States,* 298 U. S. 468, 478.

Aside from the fact that oral argument has never been held to be a requirement of due process, it is not true, as stated by petitioners in their petition (p. 17), that they had no opportunity to be heard by the Board in Washington. Petitioners never applied to the Board for oral argument on this case. They did submit a brief to the Trial Examiner (R. 71) which the Board considered. In no case in which application for oral argument has been made before a decision has it been denied by the Board.

C. *Petitioners' Contention that the Board Improperly Refused to Hear Evidence in their Behalf is Without Merit*

There is no merit in petitioners' contention that they were denied due process of law by reason of the fact that the Board refused to hear evidence sought to be introduced on their behalf. The facts as to this contention, which relates only to a single one of the discharges found by the Board to have been unlawful, have already been set forth (*supra*, pp. 5–7). At the close of the Board's case petitioners were given full opportunity to produce all available witnesses then or on the succeeding day (R. 1311). At the adjourned hearing the witnesses theretofore unavailable were heard. Thereafter, petitioners did not apply to the court below for leave to adduce additional evidence, as they were entitled to do under Section 10 (e) of the Act, although their right to make such application was specifically called to their attention by the Board's answer in the court below (R. 1698–1699). Petitioners may not claim that their statutory or constitutional rights were infringed by reason of their failure to pursue them. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1.

CONCLUSION

The judgment below is correct and in accord with this Court's decisions. There is no conflict among the Circuit Courts of Appeals. The petition should be denied.

Respectfully submitted.

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APRIL 1938.

APPENDIX.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * * *

SEC. 10 (c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and

desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

SEC. 10 (e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of

the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. * * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the board under subsection (e), * * *.

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1938.

Nos. 19 and 25.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. and its affiliated companies,

Petitioners,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA,

Intervening Respondent.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-825, *et al.*,

Petitioners,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA,

Intervening Respondent.

BRIEF FOR UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, INTERVENOR-RESPONDENT.

LOUIS B. BOUDIN,
Of Counsel for United Electrical and Radio Workers of America, C. I. O., Respondent.

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Supreme Court of the United States

OCTOBER TERM, 1938

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. and its affiliated companies,
Petitioners,
against
NATIONAL LABOR RELATIONS BOARD,
Respondent,
and
UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA,
Intervening Respondent.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-825, et al.,
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and
UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA,
Intervening Respondent.

Nos. 19 and 25.

BRIEF FOR UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, INTERVENOR-RESPONDENT.

Statement

These are petitions by employers and certain organizations of workers referred to as "labor unions," to review the decision of the United States Circuit Court of Appeals for the

Second Circuit, affirming an order of the National Labor Relations Board, directing *the employers* to cease and desist from continuing certain unfair labor practices. The order of the National Labor Relations Board was based upon certain findings of fact and conclusions of law made after an extended hearing, held in pursuance to a certain Charge filed by the United Electrical and Radio Workers of America, the present respondent, with the National Labor Relations Board, and a Complaint made by the said Board based thereon. The Charge (R. 4) was filed on May 5, 1937. The Complaint (R. 7) was filed on May 12, 1937.

The Charge as well as the Complaint was directed solely against the employers, although the matters complained of included certain actions of the employers involving the petitioner International Brotherhood of Electrical Workers (hereinafter referred to as I.B.E.W.). Due notice of the hearings ordered by the National Labor Relations Board on the Complaint was given to the employers (R. 17), and a copy of the Complaint and Notice of Hearing was also served on the I.B.E.W.* In pursuance to the said notice, the employers appeared by special appearance, disputing the jurisdiction of the Board, but after the said objection was overruled, they answered (R. 42), and their counsel conducted the hearings on their behalf. The I.B.E.W. did not participate in these hearings, but had actual knowledge of the same, and its counsel and other representatives actually attended some of the hearings (R. 1715). After the order of the Board was made, the "labor union" petitioners applied to the Circuit Court of Appeals for permission to intervene, which permission was granted, but they did not ask for any further hearings. Nor did the employers ask the Circuit Court of Appeals to direct further hearings, although they complained

* On May 12, 1937, the Board's Regional Director at New York City, although not required to do so by the Act, caused a copy of the complaint and notice of hearing thereon to be served on the I. B. E. W. by Western Union Telegraph Messenger Errand Service addressed to 103 East 25th Street, New York City. (The number "103" was an error and was intended to be "130" as shown below.) Receipt of the complaint and notice of hearing was acknowledged on the delivery ticket as follows: "Loc. 3, I. B. E. W. D. Kaplan," under date of May 12 (R. 18-19). Thereafter, on May 25, the amended notice of hearing was served upon the I. B. E. W. by registered mail, return receipt requested, at 130 East 25th Street, New York City (R. 35). As to these facts there is no dispute.

that further hearing had been improperly shut off by the Board with respect to one of the matters involved.

The gravamen of the charge made by the present respondent was that the employers had violated the rights of their employees to self-organization in various ways, principally by preventing or discouraging them from joining the present respondent and encouraging or coercing them into joining the "labor union" petitioners,* which are claimed to be mere devices for the continuation of company unions theretofore established and maintained by the employers. The principal provisions of the order of the Board direct the employers to cease and desist from continuing their unfair labor practices and particularly from discouraging their employees from joining the present respondent and from impeding their organization by means of a certain alleged contract claimed to exist between the employers and the "labor unions." It also directs the reinstatement with back pay of six employees, who, the Charge charged, and the National Labor Relations Board found, had been discharged by the employers because of labor union activities.

The facts relating to the question of jurisdiction were stipulated by the parties, and the stipulation appears at pages 1318 to 1388 of the Record. The most important facts thus stipulated will be referred to further below when we come to consider the question of jurisdiction. The consideration of the charges of unfair labor practices were the subject of extended hearings and are set forth at large in the first three volumes of the Record, but the basic facts are substantially undisputed (except with respect to the causes for the discharge of the six employees)—even though there may be a dispute as to their legal import.

---

*At the time the present respondent filed its Charge with the National Labor Relations Board, it was not aware of the existence of the "labor union" petitioners other than the International Brotherhood of Electrical Workers, and it is believed that the other "labor union" petitioners (the so-called "local unions" numbered B-825, B-826, B-828, B-829, B-830, B-832, B-839) were not then in existence. Just when they came into existence does not appear clearly from the Record. The first definite notice of their existence was acquired by the respondents when the employers sought to introduce the alleged contracts in support of their plea that the case had become moot. This did not occur until the hearings had been closed as far as the respondents were concerned, and remained open only for the employers, for the special purpose of adducing certain evidence which was not available at the time of the close of the hearing on June 24, 1937 (R. 1187).

The Findings of the National Labor Relations Board.

A. Background of Labor Organization Among the Consolidated Employees.

In order to determine the exact import of the conduct of the employers, which is the direct factual basis of the charges of unfair labor practices against them, reference must be had to the history of their attitude towards unionization of their employees. This history may be summarized in the statement that they have consistently been opposed to the unionization of their employees; that so long as the right of workers to self-organization was not guaranteed by law no labor union organization of their employees was tolerated by them; and that when this right was recognized and guaranteed by law they did everything to evade the spirit of the law while pretending to comply with its letter.

The Findings of the Board commence with the time when self-organization by workers was first recognized and partially guaranteed by the provisions of the National Industrial Recovery Act. The history itself commences, of course, much further back. Fortunately, the Record gives us a glimpse of that history to a point some ten years further back, and what it reveals throws a flood of light upon what followed after the enactment of the NIRA, and particularly on what has happened since the decisions of this Court upholding the constitutionality of the National Labor Relations Act. For that light beats not only on the employers, but also on the I.B.E.W., going far to explain the role of that organization in the "emergency" created by that decision. In attempting to explain the extraordinary course pursued by the petitioners-employers after the decisions of this Court on April 12, 1937, Mr. Carlisle, who was in charge of the labor relations of the employers, said that, in casting about for a "legal" organization with whom his companies could do "collective bargaining," it was "natural" for him to turn to the I.B.E.W., because of previous "contractual relations", and an attempt was made by him to create the impression that these "contractual relations" meant the usual relations

between employers and labor unions. But upon further inquiry we discover that the "contract" in question was to the effect that *the I.B.E.W. would not organize the Consolidated Edison employees.* The "contract" itself, which was entered into in 1924 and was put in evidence by the employers as their Exhibit 23, is, unfortunately, not printed in the Record. But Mr. Carlisle's testimony gives its general nature,—and there is no mistaking that. His testimony on this point follows:

> "We had had important relationships with the No. 3 local in all the work, which is very huge, that we did in the change-over of consumer premises, we had long standing relationships with them.
>
> "Q. Were those relationships contractual? A. They were relations which had the form of exchange of letters. Our agreement in substance was this: That none of our men would do work on the premises of a customer where it was a change-over of anything for the purpose of going off from the D.C. distribution system to the alternating current system. That ran into many millions of dollars a year.
>
> "Judge Ransom: I will produce a copy of that agreement, if you wish.
>
> "The Witness (Mr. Carlisle): We would have to continue that in the future.
>
> "Q. (By Mr. Moscovitz) *That was not a collective bargaining contract,* was it? A. No, but it was a very normal and natural thing.
>
> "Q. It had something to do with construction, didn't it? A. Well, but the time between where the company is spending normally $40,000,000.00 a year in expansion program, there has been a policy of changing over the apparatus on consumer premises. *There was a deadline agreed to across which they would not go.* * * *
>
> "Q. Yes. But this Local No. 3 arrangement, so that I can be clear in my mind, was not a collective bargaining arrangement. It was simply a construction arrangement so there wouldn't be any— A. *It was an agreement whereby we would not put our own men into work* that otherwise would be very natural and very logical for us to do.

"Q. Yes. A. To that extent it was a recognition, and a very decided recognition.

"Q. *Was it a relationship where the I.B.E.W. was representing your employees?* A. No" (R. 1245).

The "deadline" referred to by Mr. Carlisle was the outside boundary line of, or, rather, fence around, the Consolidated's labor force. It is this line or fence that the I.B.E.W. agreed in 1924 not to cross, *and it never did.* No wonder Mr. Carlisle and his associates were satisfied with their relations with the I.B.E.W., as Mr. Carlisle testified in another place. No wonder, also, that when the avowed company unions had to be given up, Mr. Carlisle's thoughts naturally turned to the I.B.E.W.

> "I had no other thought in my mind," testified Mr. Carlisle as to what happened upon the rendering by the United States Supreme Court of its fateful decisions upholding the constitutionality of the National Labor Relations Act, "but what the *logical, natural and proper* arrangement was to make the arrangement with the I.B.E.W." (R. 1245).

We may now turn to the history of the "organization" of Consolidated's employees from the time when some form of organization became imperative upon the enactment of the National Industrial Recovery Act.

That Act became a law on June 16, 1933. Following that, in the latter part of 1933 and the early part of 1934, organizations known as Employee Representation Plans were established by the companies comprising the Consolidated Edison System among their employees. These Plans were formed, as the Board expressly found, "as a means of purported compliance with the National Industrial Recovery Act and the codes adopted thereunder for the power industry." That these Plans were mere travesties upon the rights guaranteed by the National Industrial Recovery Act, is apparent from the manner in which they were established and maintained, as expressly found by the National Labor Relations Board. The findings hereinafter quoted relate to the manner in which the Plan was established by one of the companies, but the

Board found that the manner of the establishment of the Plan by the particular company, Bronx Gas and Electric Company (now part of Consolidated Edison Company of New York), is typical of the Plans established by all of the companies. The manner of the establishment of the Plan among the employees of the Bronx Gas and Electric Company, as found by the Board, was as follows:

> "One day in the latter part of 1933, during working hours, several employees of Bronx Gas and Electric Company were notified by their supervisors to report to the president and the vice-president of the Company. On their arrival they were informed by the president and the vice-president that they, the employees, had been sent on this mission by their fellow employees for the purpose of instituting a procedure for collective bargaining. They were given petitions to circulate among the employees for signatures. The petitions bore captions stating in substance that the subscribers desired to have a poll among the employees to determine upon the establishment of a means of collective bargaining. Harold Straub, one of the employees engaged in procuring signatures, testified that his foreman placed a company car at his disposal for contacting employees and that he devoted two full days to the task, for which he was paid his regular salary as a lineman. After sufficient signatures to the petitions had been obtained, a poll was conducted among the employees on the question whether they desired the establishment of the Plan, which had been drafted and distributed by the Company, as a means of collective bargaining. The question having been decided affirmatively, the election of officers was held shortly thereafter. Practically all the employees became members of the Plan, as it was the current sentiment that such action accorded with the desire of the Company" (R. 86).

The constitution and by-laws of the Plan in question stated that its purpose was "to provide means by which employees of the Company, through representatives of their own choosing, may deal collectively with the management of the Company" and that "collective bargaining under this Plan may

relate to wages, hours of labor, working conditions," etc. But, as a matter of fact, as the Board found, *no meetings of either the members of the Plan or of their functionaries, was ever had with management for the purposes of bargaining collectively, either as to wages, hours of labor, or other working conditions.* In fact, the Record does not disclose that any meetings of the members of the Plan were ever held or provided for by its constitution or by-laws,—the business apparently being entirely in the hands of a system of councils and their chairmen. As to what the latter did, the findings of the Board are as follows:

> "On several occasions meetings of the chairmen of all the general councils were called by the respondents for the purpose of imparting information to be reported to their constituents, but never for the purpose of bargaining collectively as a unit. Thus in July 1936, Carlisle, chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and member of the board of directors of each of the respondents herein, called such a meeting to inform it of the restoration of a former pay reduction and, in December 1936, to inform it that there would be no Christmas bonus as had been rumored."

The action of the companies in establishing the Employee Representation Plans, the spirit which moved them, and the aims and purposes sought to be achieved, can only be understood if we correlate this action to the attempt of the employees at self-organization and the attitude of the companies towards these attempts. The attempts at self-organization by the employees and the attitude of the companies towards them are aptly summarized in the following excerpt from the Findings of the National Labor Relations Board:

> "In the early part of 1934, approximately coincidental with the establishment of the Plans, there was formed a labor organization among the employees of the respondents, known as the Brotherhood of Utility Employees, herein called the Independent Brotherhood. It was a national organization, but certain of its locals limited their membership exclusively to the respondents' employees. All six employees named in

the amended complaint as having been discriminatorily discharged were members of the Independent Brotherhood, while several of them were organizers of Local No. 103, which had jurisdiction of the employees of New York and Queens Light and Power Company. All six were also members of the Plans and at least one was for a time an officer of the Plan at New York and Queens Light and Power Company. In 1935 certain of these six employees, as stated hereinafter, formulated a petition of grievances, dealing principally with wage increases, for presentation to the management of New York and Queens Electric Light and Power Company. After overcoming the reluctance of the general council, it was finally presented to the management, but nothing was done concerning it. During the same period the Plan members of one of the departments of Consolidated Gas Company, Inc., set up a committee, headed by two members of the Independent Brotherhood, to investigate the Plan with respect to company domination and pursuant to its mandate the committee filed monthly reports of company domination. Convinced that the Plans were dominated by the respondents, the Independent Brotherhood issued and distributed magazines, pamphlets, circulars, and leaflets attacking the Plans as company-dominated unions. Representatives of the Independent Brotherhood also attended all the hearings before the New York Public Service Commission, involving such matters as rates, and claimed an interest therein by reason of their representation of respondents' employees.

"Failure to achieve any success as an independent organization induced the several locals of the Independent Brotherhood in March 1936 to consolidate and affiliate with the I.B.E.W. as one local, Local No. B-752. In March 1937 the members of Local No. B-752 voted to affiliate with the United and thereupon one local, Local No. 1212, was chartered with jurisdiction over only employees of the respondents. All the members of Local B-752 became members of the United Local No. 1212. Local No. B-752 was thereupon suspended by the I.B.E.W. In April 1937 the United announced the formation of a utility division and commenced a vigorous campaign to organize the respondents' employees.

> "At this juncture the respondents instituted a campaign to procure signatures of employees to cards designating their desire for the continuance of the Plans. This campaign was interrupted by the decisions of the United States Supreme Court sustaining the validity of the National Labor Relations Act, for thereupon the respondents discontinued their campaign and abruptly altered their labor policy, as described below." (R. 89).

To this should be added the further findings of the Board with respect to the discharge of the six employees hereinbefore referred to and considered further below, which clearly show a deep-seated animosity on the part of the petitioners-employers towards self-organization by their employees, and carefully designed plans to decapitate any such organization whenever it dared raise its head.

B. Events Between April 12, 1937, and the "Reorganization" of the Company Unions.

With this background in mind, we may now turn to the events following the decisions by the United States Supreme Court on April 12, 1937, in the cases upholding the constitutionality of the National Labor Relations Act, which are the basis of the charges of unfair labor practices investigated and sustained by the National Labor Relations Board. These events are thus stated by the Board in its Findings:

> "After the United States Supreme Court on April 12, 1937, rendered the decisions sustaining the validity of the National Labor Relations Act, Carlisle, who was in charge of the respondents' labor policy, had two conferences concerning the recognition of the I.B.E.W. with D. W. Tracy, the International president of the I.B.E.W. On April 16, 1937, Tracy dispatched a letter to Carlisle demanding recognition of the I.B.E.W., accompanied by a proposed contract providing for recognition of the I.B.E.W. as the representative of its members, a five per cent increase in wages, and a procedure for settling grievances which outlawed strikes and lockouts. On the morning of April 20, 1937, Carlisle called a convention in the board room of Consolidated Edison Company of New York, Inc.,

of the members of all the general councils of all the Plans, at which he announced that in view of the decisions of the United States Supreme Court a continuance of the Plans with the financial support of the respondents would constitute a violation of the spirit of the National Labor Relations Act, and more particularly, of the provisions of the Doyle-Neustein Bill, which he termed a little Wagner Act, which was then pending in the Legislature of the State of New York and appeared almost certain of enactment. He informed them that therefore he intended to recognize the I.B.E.W. In response to questions from the floor, Carlisle declared that employees were free to join any labor organization, but that the respondents intended to recognize the I.B.E.W. Various comments from the floor indicated that the Plan representatives considered the sudden recognition of the I.B.E.W. as a means of coercing them into transferring their allegiance to the I.B.E.W. Carlisle refused the request of several Plan representatives for a delay of the recognition of the I.B.E.W. until the employees had an opportunity to discuss the matter.

"Harold Straub, chairman of the general council of the Plan at Bronx Gas and Electric Company, asked Carlisle whether it was not true that he had hitherto considered unions as unnecessary evils, but now, in view of the United States Supreme Court decisions and the pending Doyle-Neustein Bill, as necessary evils, and as between the I.B.E.W. and the United he preferred that the employees join the I.B.E.W. Carlisle said that this was a very apt statement of his position. Straub testified that Carlisle stated to him also that he thought that the Labor Relations Board of the State of New York would be composed preponderantly of men in sympathy with the American Federation of Labor and hence that it was the part of wisdom to recognize the I.B.E.W. When Carlisle, himself, testified, he was not specifically questioned on direct examination concerning Straub's testimony on these particular points. Straub also asked Carlisle why recognition was being accorded the I.B.E.W. when its membership among the respondents' employees was negligible. Carlisle replied that the I.B.E.W. had some members and would soon have a great many more. Carlisle, himself, testified that at the time he recognized the I.B.E.W. he knew that its

organization among the respondents' employees was incomplete and that the formation of locals and the procurement of membership was to follow recognition and that when that was accomplished contracts with the various locals would be executed. He also testified that at this time he knew that the members of Local B-752 had transferred their allegiance to the United which had commenced a vigorous campaign for membership. It is quite clear that recognition of the I.B.E.W. under these circumstances was intended as a blow to the United, as an aid to the I.B.E.W., and as a strong indication to the employees of the union favored by the respondents.

"After Carlisle left the conference he dispatched a letter to Tracy recognizing the I.B.E.W. along the lines of the proposed contract. News of this letter appeared in the early afternoon papers, which led many of the Plan representatives to believe that he had formally recognized the I.B.E.W. even before he had called the conference of general councilmen. The conference continued for a time after Carlisle's departure, and speeches were made characterizing recognition of the I.B.E.W. as a design to force the employees into the I.B.E.W. Upon the adjournment of the conference, the general councilmen proceeded to a meeting of the general council of Consolidated Edison Company of New York, Inc., where the chairman narrated the above events. The general opinion of this meeting also was that recognition of the I.B.E.W. was intended to force membership in the I.B.E.W.

"On the afternoon of the same day, Straub called on Colonel Stillwell, vice-president of Consolidated Edison Company of New York, Inc., with whom Straub, as chairman of the general council of the Plan at Bronx Gas and Electric Company, had discussed Plan matters since the merger of the latter company in 1936 into Consolidated Edison Company of New York, Inc. Stillwell said that recognition of the I.B.E.W. would be a blow to the Committee for Industrial Organization, of which the United was an affiliate, and was so intended, and that it would be a wise move for the Plans and the employees to go over to the I.B.E.W. and obtain control of it. Upon Straub's request he gave him the name and address of G. M. Bugniazet, International secretary of the I.B.E.W., with whom

he could confer concerning ways and means of switching the Plan at Bronx Gas and Electric Company over to the I.B.E.W. The following day Straub called at the address, but merely discussed the aims and policies of the I.B.E.W. with a representative of the I.B.E.W. Later that same day Straub called a meeting of a number of members of the Plan at the Bronx Gas and Electric Company and informed them of his actions. He found among them a strong sentiment for the United and for an independent union with no outside affiliation, while several of them complained that their foremen were applying pressure in behalf of the I.B.E.W.

"On the following day, April 22, a conference of 400 employees, mostly members of the various general councils, who, as we have already indicated, were always free to leave their work for Plan affairs, was held in the auditorium of Consolidated Edison Company of New York, Inc., building on Irving Street. Carlisle had been invited to attend, and while awaiting his arrival the men discussed the matter. Three views were presented. Some favored the I.B.E.W., others the United, and others an independent union with no outside affiliation. A motion for a secret ballot on the question among those present at the conference was carried. William P. Ganley, co-chairman of the general council of the Plan at Consolidated Edison Company of New York, Inc., and presiding officer of this meeting, took no action, however. The meeting was adjourned to the company's cafeteria where Ganley read a telegram from Tracy indicating the manner in which the various Plans could come into the I.B.E.W. as locals with the Plan officers as officers of the locals. The meeting growing somewhat restive, a messenger was sent to summon Carlisle. Upon his arrival Carlisle was subjected to such a barrage of questions that the procedure was adopted of formulating three questions which were addressed to Carlisle by Ganley. The questions and answers were substantially as follows:

Question: Could a vote be taken among the respondents' employees on the matter?

Answer: If such a vote implied that the respondents would bear the expenses of the election, it could not.

Question: Would he stop department heads and foremen from coercing employees into joining the I.B.E.W.?

Answer: Since he had not issued any order to do so, he would not issue any order to stop.

Question: Why were I.B.E.W. organizers allowed to enter the plants and solicit employees during working hours while United organizers were denied that privilege?

Answer: The respondents have never policed their buildings and did not intend to begin now.

"A shout from the floor accusing Carlisle of having 'sold 40,000 employees down the river' evoked considerable applause.

"Carlisle departed and shortly thereafter, upon adjourning, Ganley announced that there would be another meeting on the following day for the purpose of forming an independent union. A meeting for such purposes was apparently never held, but a meeting of the general councilmen of the Plan at Consolidated Edison Company of New York, Inc., called by Ganley, was held in the board room of the company. At this meeting, Ganley and a number of Plan officials decided to see Tracy at the Hotel Roosevelt in New York City. Tracy informed them that the I.B.E.W. intended to establish seven locals and that each of the Plans could shift over to the I.B.E.W. as a corresponding local, retaining Plan officers as officers of the local. The Plan officials returned to the meeting and 22 general councilmen signed a petition for an I.B.E.W. charter. They then went back to Tracy and a local was chartered. Such was the birth of Local B-829. Thereafter, on May 4, 1937, the 22 signers of the petition held an election among themselves and elected the officers of the Plan to comparable positions in Local B-829.

"After Local B-829 was chartered on April 23 the officials and councilmen of the Plan at Consolidated Edison Company of New York, Inc., availing themselves to the full of their privileges as Plan officials to devote full time to Plan affairs, commenced a campaign for membership in the I.B.E.W. and were paid their regular salaries by the company. Straub, at first attracted by the idea of going over to the I.B.E.W., grew lukewarm. In the election of May 4 he refused a position as an officer in Local B-829, but con-

tinued to assist in procuring members and collecting dues, devoting a large portion of his working hours to the task and receiving his regular salary from the company. He was reproached by Ganley, who had become president of Local B-829, for lack of enthusiasm. Finally, on May 14, he joined the United.

"In his talk with Stillwell on April 20, Straub had asked to be transferred to a job under different supervisors, but still in his home area, The Bronx, because in his capacity of chairman of the general council he had antagonized certain supervisors who, upon the dissolution of the Plan, would make it uncomfortable for him. On May 21, 1937, he was transferred to cable-splicing in Manhattan. Upon inquiry he was informed that the transfer was the result of large shifts of workmen in the respondents' system. In this fashion, after he had joined the United and proved himself an obstacle to I.B.E.W. organization in The Bronx, he was transferred from his home area where his influence with the employees was greatest.

"The establishment of all the locals of the I.B.E.W. substantially conformed to the pattern of the establishment of Local B-829, with most of the officers of the Plans throughout the respondents' system becoming officers of the corresponding I.B.E.W. locals and continuing to exercise their privilege as Plan officers for several weeks after the I.B.E.W. locals were chartered, devoting all their working hours to I.B.E.W. organization, using the respondents' officers and secretarial services, and utilizing the respondents' expense accounts. During all this time they were paid their regular salaries by the respondents.

"Evidence specifically adduced at the hearing discloses that the respondents pursued additional methods of coercing their employees into membership in the I.B.E.W. The department heads and foremen during working hours solicited employees to join the I.B.E.W. and generally assumed the role of I.B.E.W. organizers. The sanction behind the solicitation was clearly revealed in the accompanying advice and admonitions to the effect that the respondents desired them to become members of the I.B.E.W. and that sensible employees would conduct themselves accordingly.

"The respondents allowed to I.B.E.W. organizers free access to all the respondents' buildings and per-

mitted them to solicit employees individually and in groups during working hours, while similar privileges were denied to United organizers. I.B.E.W. delegates were also permitted to collect dues on the respondents' premises. They availed themselves, for that purpose of officers of foremen or other offices or rooms and, in some instances, hung signs upon the doors bearing the legend Pay A. F. of L. Dues Here. Later the practice of hanging up such signs was discontinued and foremen adopted the practice of telling the employees to go down to some office on the premises and pay their dues. Similar privileges were denied to the United.

"I.B.E.W. officers remained in the employ of the respondents, exercising their Plan prerogatives in behalf of the I.B.E.W., for several weeks, and it was only shortly prior to the execution of the contracts between the respondents and the I.B.E.W. locals that they resigned from the respondents' employ to become full time I.B.E.W. officers paid by the I.B.E.W. Carlisle testified that the respondents permitted the Plan officers to retain their offices and to exercise their prerogatives in order to give them an opportunity to wind up their affairs. It appears from the evidence, however, that the respondents knew that the Plan officers had shifted over to the I.B.E.W. and had utilized their Plan prerogatives in behalf of the I.B.E.W. Moreover, it is clear that the respondents had intended as much. Carlisle also testified that he had given no orders to the respondents' department heads and foremen to act in behalf of the I.B.E.W. Express orders, however, were unnecessary as the respondents' position had been made abundantly clear, with the result that their supervisors took the steps appropriate for its attainment.

"The evidence reveals the delineations of the respondents' design to dictate to their employees the choice of their bargaining representative. The first step was to favor the I.B.E.W. by according it recognition at a time when its membership was negligible and its organization hardly commenced and when the respondents knew that the United was the only active labor organization among its employees. The next step was to deliver over the Plan organizations to the I.B.E.W. by making the respondents' position in the matter clear to the Plan representatives. Then

followed the organizational drive in behalf of the I.B.E.W. by department heads, foremen, and Plan representatives, leading up to the stage of organization contemplated by Carlisle and Tracy as sufficient to justify the execution of contracts."

C. The Alleged Contracts Between the Employers and the So-Called "Labor Unions."

The petitioners claim that between May 28th and June 24, 1937, certain agreements were entered into between the seven separate corporations constituting the Consolidated Edison System, and the seven alleged "local unions" of the I.B.E.W.* The Board found that these so-called contracts were mere devices to prevent self-organization on the part of the employees involved. They were in fact part of the scheme to continue the company unions, and to prevent the employees in question from joining the present respondent. On this head, the Board found as a matter of fact, as follows:

> "It is clear from the evidence that the contracts were not the result of unhampered bargaining, but were rather the culmination of a plan by the respondents to select the I.B.E.W. as the exclusive representative of the respondents' employees and at the same time deal a blow to the United which they opposed. Carlisle's interpretation of the contracts, despite the

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*The National Labor Relations Board in its findings states (R. 99) that these contracts were entered into between May 28th and June 16th, and the Circuit Court of Appeals makes a similar statement. This error is due to the secretiveness of the petitioners with respect to these "contracts,"—secretiveness not only with respect to their contents, but also with respect to their execution. As already stated, these "contracts" were not produced until after the close of the actual testimony taken at the hearings, and were offered by the respondents in evidence in support of a plea that the case had become moot by reason of their execution. But even then they were not frank about what had actually happened. As appears from the footnote to the Findings of the Board on page 100 of the Record, counsel for employers produced only six contracts, stating that the seventh contract (between Consolidated Telegraph & Electrical Subway Company and "B-828") "was substantially similar to the above contracts and *executed during the same period*,"—i. e., between May 28th and June 16th. *As a matter of fact that "contract" had not been executed at the time.* It was actually executed on June 24th (R. 1623). But neither the Board nor the present respondent knew anything about it until after the "labor union" petitioners had filed their petition for review in the United States Circuit Court of Appeals and annexed this "contract" as a part of Exhibit "I" to that petition. Apparently, also, none of the "contracts" were delivered before June 15th or 16th, for those which bear an earlier date contain riders dated June 15th (R. 1581-1640).

express limitation of the representation of the I.B.E.W. to its own membership, discloses the force of the blow dealt the United, namely, the denial of the opportunity to bargain collectively with the respondents during the life of the contracts." (R. 102).

The Board also made the following statement, under oath, in its Answer to the Petition of the "labor unions":

"Further answering, the Board avers that said contracts are wholly invalid and contrary to law in that they were not entered into in good faith by the companies aforesaid, composing the consolidated system parties thereto and respondents to the order issued by the Board, but followed upon a course of action on the part of said companies intended to and which in fact did intimidate and coerce their employees into joining the petitioner International Brotherhood of Electrical Workers (hereafter called the Brotherhood) or one or more of its affiliated petitioner unions, and more particularly that said companies immediately following their withdrawal of financial support from certain Employee Representation Plans announced their recognition of the Brotherhood and expressed their preference that their employees join said Brotherhood, despite the fact that at that time they were aware of the meagre membership of their employees in the Brotherhood, despite the fact that at that time they knew that the members of Local B-732 of the Brotherhood had transferred their allegiance to and had become members of Local 1212 of the United Electrical and Radio Workers of America, despite the opinion expressed by certain representatives of their employees that the sudden recognition of the Brotherhood was a means of coercing them into joining that union, and despite the request on behalf of their employees for a withholding of recognition of the Brotherhood until the employees had an opportunity to discuss the matter. Nevertheless said companies continued in their expressed purpose and, following recognition of the Brotherhood, permitted officers of the various locals thereof, department heads, and foremen to devote full or part time, as required, to campaign for membership therein among and collect dues from said employees during working

hours and on the companies' time, drawing their regular salaries from the companies nevertheless. This practice continued up until a short time before the companies entered into the formal contracts with petitioners, and notwithstanding the companies' lack of definite information as to the number of their employees that were members of the petitioner unions, the companies nevertheless executed the aforementioned contracts. It was not until June 29, 1937, after the contracts were executed and the presentation of the Board's case in the proceedings before it had been completed, that the companies received a statement from the Brotherhood of its membership totals, but notwithstanding that this membership statement showed that one of the locals—Local B-829—did not represent a majority of the 13,200 employees eligible for membership therein, the companies nevertheless continued to treat the contract with said Local B-829, as they did all of their contracts with petitioners, as an exclusive collective bargaining agreement in that they would not enter into collective bargaining agreements with any other labor organization during the life of said contracts. Under all of the facts and circumstances the Board was justified in concluding that the companies did and intended to impose the Brotherhood upon their employees to the exclusion of the United Electrical and Radio Workers of America or any other labor organization, and that under all of the facts and circumstances of this case the said contracts were invalid and contrary to law" (R. 1712-1713).*

*In their briefs counsel for petitioners state that the so-called "local unions" involved herein comprised about 30,000 of their employees out of a possible 40,000, *as if that were a proven fact in the Record.* As a matter of fact, there is no such testimony in the Record. In fact, there is no testimony whatever of the actual membership of these alleged "local unions." What does appear in the Record is a self-serving declaration, made not under oath and by a person who was not called as a witness and was not subject to cross-examination, on behalf of the "labor union" petitioners to a representative of the employers, *claiming* such membership. *This claim was made after the evidence had been closed,* and there was, therefore, no way of contradicting or disputing it.

ARGUMENT.

I.

The National Labor Relations Board Had Jurisdiction Over the Controversy.

A. *General Principles.* The Constitution must be construed as of the time of its application even though that application is controlled by the intentions of the framers as to the nature of the government they were establishing, and the general distribution of powers thereunder. While the division of power between state and nation must be maintained, the power of the National Government of necessity grows at the expense of the States with the physical growth of the country and with the growth of the interdependence of its parts due to economic progress and the complications of modern life. This is particularly true in the domain of commerce: Because of the physical growth of the country, of new inventions which change the relations of the parts of the country to each other as well as the relation to each other of the different components of commerce *within* the same parts of the country, interstate commerce is a constantly growing concept that requires constant adjustment to new conditions. Furthermore, "interstate commerce" is a matter of the *relationship* of things and not of things themselves. The same *thing* or *activity* may, therefore, be both *inter*state commerce *and intra*state commerce, dependent upon its relation to other things and activities, or the particular aspect which is involved in the governmental action under consideration. Specifically, a thing may be *intra*state commerce for the purpose of *taxation* and *inter*state commerce for the purpose of *regulation.**

* Because of these well-recognized distinctions we deemed it unnecessary, in the discussion of cases in the latter portion of this brief, to burden this Court with the discussion of obviously inapplicable cases cited on the briefs of counsel for the petitioners and relating to other branches of our constitutional law, such as *Brush* v. *Commissioner* (300 U. S. 352), from the field of taxation, and *Hopkins Savings Association* v. *Cleary* (296 U. S. 315), belonging to the field of local government.

B. *The Power of Congress Over Commerce Generally.* The Constitution makes a grant of power over interstate and foreign commerce to the General Government, *but does not specifically reserve anything to the States.* The intention of the Framers was clearly to vest *plenary power* in the General Government, and to leave to the States only what is not necessary in order to accomplish the *object* of the grant of power to the General Government. The *regulatory* power of the General Government, is, therefore, not limited to what may be strictly or technically termed interstate commerce, but includes *intra*state commerce, insofar as that is necessary in order to give full scope to the regulatory functions of the General Government. It is on that principle that *intra*state rates of common carriers may be prescribed by an agency of the Federal Government when that is deemed necessary in order to remove discriminations as to persons and places in interstate commerce. The power of the Federal Government over commerce is not, however, *limited* to regulations, but is plenary in the sense that it empowers the Government to take measures for the *aid* and *encouragement* of that commerce, provide for its security, and protect it from interruptions or interferences. It is on that principle that *intra*state rates of common carriers may be prescribed by an agency of the Federal Government for the purpose of producing a revenue sufficient to maintain an adequate carrying system in interstate commerce.

C. *The Power of Congress Over the Employer-Employee Relation.* The power of Congress over the employer-employee relation does not depend upon the employer's being in interstate commerce, but extends over all employers whose activities *affect* interstate commerce, or the interruption of whose activities may injuriously affect that commerce. Also, that power extends to taking measures *in advance* to insure the continuance of those activities. Congress, therefore, has power not only to take measures to prevent interruptions of commerce actually threatened, but also to prescribe *modes of conduct looking to* the prevention of such interruptions. The purpose of the National Labor Relations Act is to es-

tablish *general modes of conduct* which would operate in industry continuously, thereby removing interruptions of, or threats of interruption to, commerce. The powers and jurisdiction of the National Labor Relations Board do not, therefore, depend upon the actual threat of a strike in the particular instance, but on the effect of the kind of conduct complained of on peace in industry generally. The Act in question, and the powers granted thereby to the Board, are intended to act as *preventatives* and not as *cures* only.

D. *The Relation to Interstate Commerce of the Services in Which Petitioners Are Engaged.* In considering the problem of jurisdiction of the National Labor Relations Board over the employer-employee relationship involved in this case, several aspects must be taken into consideration: (1) The *nature* of the service rendered or activity engaged in by the Employers in its relation to interstate commerce; (2) the position which the Employers in question occupy with relation to interstate commerce generally; (3) the *magnitude* of the activities involved, which makes their continuance a matter of *national concern.*

While the Consolidated Edison System does not technically engage in interstate commerce, it is, nevertheless, an *Agency* of interstate commerce. The services which the employers herein render literally *make the wheels of commerce run.* One of the activities of the employers herein is to furnish the *motive-power* which sets in motion through-trains on great interstate transportation systems and the entire motive-power for some lesser ones. It furnishes the physical *motive-power* which controls the nerve centers of the nation's commerce, such as the New York Stock Exchange, the Dow-Jones Ticker Agency, and the principal telephone, telegraph and radio agencies. It also furnishes light, heat, and/or power, to many instrumentalities of foreign commerce, such as illumination for the Port of New York, including light-houses, piers and other facilities of transatlantic and coastal shipping. It also furnishes the physical motive-power, as well as light and heat, for all governmental services in New York City, including its postal service.

Besides being an *Agency* of and direct participant in interstate commerce and foreign commerce, the general activities of the Consolidated System are of such *magnitude* as to make the cessation of its activities a matter of national concern even insofar as they may be said to be purely local. These activities include not only light and heat for the inhabitants of the great City of New York, which make their life within the City and their commercial activities therein possible, but also the motive-power or energy for a large portion of its industrial and commercial activities, the cessation of which would most injuriously affect the commerce of the nation.

In addition, the Consolidated System purchases immense quantities of supplies which come to it in interstate commerce, and it produces large quantities of by-products which go into interstate commerce,—the two items being of such magnitude as to substantially affect interstate commerce.

E. *The Power of the Federal Government Does Not Depend on the Proportion of the Interstate Business to Intrastate Business Involved, nor is it in any way Affected by the Legislation of the State of New York.* Where *inter*state and *intra*state activities are commingled, there is a distinction between cases involving *production and distribution of commodities* on the one hand, and *instrumentalities and agencies* of commerce on the other. In the first class of cases, the proportion of the commodities going into or distributed in interstate commerce may be of importance; although even then it is not a decisive consideration, and the magnitude of the interstate commerce involved may be decisive even though its proportion to the entire commerce involved be small. But in the case of *instrumentalities* and *agencies* of commerce, the proportion can never be taken into consideration, and the agencies and instrumentalities of interstate commerce are exclusively within the control of the Federal Government, irrespective of the proportion of the *inter*state service to the *intra*state service.

Nor is the Federal power in such a case in any way affected by state legislation. In case of conflict the Federal

power is supreme. In the instant case, however, *there is no such conflict*, since the New York State Labor Relations Act was not in effect at the time the present controversy arose, nor did it cover the matters in controversy. Furthermore, that Act was passed *in aid* of the Federal legislation involved herein, and it makes specific provision for the retiring of the state agency when the Federal agency takes jurisdiction.

II.

The National Labor Relations Board Correctly Decided the Controversy.

A. *The General Attitude of the Employers Towards Labor Union Organization.* The history of the labor relations of the employers herein conclusively proves their general hostility towards self-organization by their employees. Up to the enactment of the National Industrial Recovery Act, the employers herein did not tolerate any organization of their employees, and many years prior to the enactment of that Act, they entered into an agreement with Local 3, I.B.E.W., which in effect guaranteed the non-organization of their employees. Upon the enactment of the National Industrial Recovery Act they caused to be organized pretended labor organizations, now conceded to have been company unions. These were continued after the enactment of the National Labor Relations Act until April 12, 1937, when this Court upheld the constitutionality of that Act. During all of that period, the employers herein ruthlessly suppressed every effort of their employees towards self-organization.

B. *The Activities of the Employers Herein Since April 12, 1937, Run True to Form.* For some time prior to April 12, 1937, United Electrical and Radio Workers of America (referred to as "C. I. O.") entered upon a campaign of organization among the employees of the Consolidated System, which met with the usual hostility of the System to independent labor organization among their employees. Immediately after the announcement by this Court of its

decision in the *Jones & Laughlin* case, the petitioners herein got into communication with each other, and this resulted in an announcement by the Consolidated System *to its employees* on April 20, 1937, that Consolidated "recognized" the I.B.E.W. as *the exclusive* bargaining agency for all of its employees, numbering some 40,000. At that time, none of the employees involved belonged to the I.B.E.W. Up to that time, I.B.E.W. had shown no interest in the organization of utility employees, and its only New York City "local" was under contract with Consolidated not to organize its employees.

Immediately after the said announcement, and in pursuance to the policy thus announced, I.B.E.W. is supposed to have entered upon an "organization campaign" among the employees involved, which is supposed to have produced the unheard of marvel of organizing some 32,000 employees of the Consolidated System into seven "locals" of I.B.E.W. The Record shows that what actually happened was that the Consolidated instituted a campaign of "organization,"—really terrorization,—which had the result of transforming the seven previously existing company unions into seven alleged locals of I.B.E.W., except for such defections as resulted from those organizations because of the decision of this Court, which assured to the workers the right to self-organization. The Record clearly demonstrates that the activities pursued by the employers herein since April 12, 1937, were a continuation of their "labor policy" formed and pursued prior to that date, which can be summarized as "hostility to independent labor organization."

III.

The So-Called Labor Unions and the Alleged Contract.

A. *The True Character of the "Labor Union" Petitioners.* It is not claimed that International Brotherhood of Electrical Workers is not a bona fide labor union. *It is claimed, however, that the other "labor union" petitioners, the so-called "Locals" of I.B.E.W. are not bona fide unions, but*

merely the old company unions under new labels. The Record shows that for reasons of its own, I.B.E.W. agreed to sell to the employers herein fig-leaves,—euphemistically called *charters,*—whereby the company unions could cover their shame and appear in the guise of independent labor organizations. The Record conclusively proves that there was no change in organization, but that the previously existing seven "Employee Representation Plans" *were continued* in operation with their old set of officers after the re-christening, and that that was done *in pursuance to an agreement entered into prior to the "chartering."* The Record shows that the agreement of "recognition" included an agreement for the continuation of the company unions. The so-called "local union" petitioners herein were not in existence at the time the present controversy arose, except as avowed company unions, and they have no other existence today.

B. *The So-Called Contracts Are Wholly Fictitious.* The National Labor Relations Board found that the so-called contracts between the employers petitioners and the "labor union" petitioners were not made in good faith, and that their real purpose was to defeat self-organization among the employees of the Consolidated Edison System. These findings are amply borne out by the Record, which shows that these "contracts" were the culmination-point of an elaborate system of pretense and make-believe, designed, on the one hand, to raise a smoke-screen of independent union organization and supposed "jurisdictional disputes," and, on the other, for the purpose of entangling this case, if possible, in the meshes of the "due process" clause, and the law applicable to "contractual rights." The Record shows that the actual "contract" was entered into between Floyd G. Carlisle and Daniel W. Tracy at a private conference held on or about April 19, 1937, and that whatever happened afterward was merely done in pursuance to and in order to carry out that contract.

That contract may have been one of "bargain and sale," but it was not a "collective bargaining" contract. At that time Tracy did not represent any of the employees involved.

and had no mandate from them to enter into any contract with the employers herein. The contract thus entered into was contrary to the public policy of the land and utterly void. Everything done in pursuance to that contract or in order to carry out its purpose, is similarly void.

IV.

The Order of the National Labor Relations Board Was Proper in Every Respect and Should be Sustained.

A. *The Order of the Board Is Based Upon Its Findings, and Every Part of It Is Necessary in Order to Remedy the Evils Found to Exist.* The National Labor Relations Board found three kinds of unfair labor practices indulged in by the employers herein: labor espionage; discharges of particular employees because of union activities; and discouragement and prevention of self-organization on the part of their employees by coercing them into joining pretended labor organizations of the employers' own creation, which would render "collective bargaining" nugatory. All these evils had to be remedied, and the order is directed to that purpose. The interference with self-organization could not be stopped without "disestablishing" the illegal "contract." Its "disestablishment" was the only efficacious remedy, and it was the duty of the Board to order it.

B. *Neither the "Due Process" Nor the "Impairment of Obligation" Clause, Nor Any Private Contractual Rights Are Involved.* The "impairment of obligation of contracts" clause of the Constitution clearly is not involved. Nor is the "due process" clause, either in its procedural or substantive aspects.

The argument under this head must be divided into three parts: first, whether or not any contract existed; second, if the contract existed, who were the parties to it; and third, what was the nature of the contract. If, as the Board found, the contract was not entered into in good faith but was only part of a scheme to circumvent the law, there was in effect

no contract. Fraud vitiates any contract. So does the repugnance to public policy.

Assuming, however, that contracts in fact existed, the only parties to these contracts under the laws of New York were the employers and the so-called "local unions." If they were "property," they were the property of the "locals" and not of the I.B.E.W. Neither the "locals" nor the contracts were in existence at the time the proceedings herein were commenced. The procedure provided by the Act and the Board are ample, and constitutionally adequate to protect the rights of an "aggrieved party," but neither I.B.E.W. nor "locals" sought this protection at any stage of the proceedings. Clearly, therefore, they cannot complain with respect to any question of procedure whereby the order with respect to the "disestablishment" was made by the Board and confirmed by the Circuit Court of Appeals.

Nor, is there any problem of substantive private rights because the "contracts" are not private contracts and do not give rise to private rights. On general principles, as well as because of *their provisions*, these "contracts" are nothing but public treaties, establishing a norm or relationship between the employers and their employees. Neither property rights nor private contractual rights of any of the "labor union"-petitioners are in any way involved. The only rights involved are the rights of the "local unions" to act as "bargaining representatives" of certain workers in their relations with their employers. These rights are not a matter of private contract, and are regulated by law. The law whereby they are regulated is the National Labor Relations Act. Any contracts contrary to that Act are void and confer no rights whatever. On the other hand, any rights which the "labor union"-petitioners may have under the provisions of that Act are fully protected by that Act, and may be enforced in a proper proceeding under Section 9 of that Act.

POINTS.

PART ONE: JURISDICTION.

POINT I.

The general principles upon which the power of the general Government over the commerce rests are such that the correctness of the exercise of jurisdiction by the National Labor Relations Board in the instant case is beyond doubt.

We respectfully submit that the correctness of the action of the National Labor Relations Board in assuming jurisdiction in this case is beyond doubt. An examination of the general principles of the exercise of power by the National Government over commerce, as these principles have been enunciated from time to time by this Court, demonstrates two propositions: first, that the division between *inter*state and *intra*state commerce is neither definite nor permanent; and, second, that the same thing may be *inter*state commerce in respect to one situation or exercise of power, and *intra*state commerce with respect to another situation or exercise of power. As we shall see further below, this is not a peculiarity of the Federal power over commerce, but applies generally to the division of power between the Federal Government and the States. It is inherent in the very nature of our Constitution. But it is particularly applicable to the power over commerce, because of the nature of the subject over which the power is exercised,—commerce being a constantly changing thing, and the direction of its change being constantly towards *nationalization and integration*.

A. The Constitution Must Be Construed as of the Time of Its Application.

"General propositions do not decide concrete cases." Nevertheless, certain general principles apply to all questions of power arising under our Constitution. And, we re-

spectfully submit, that the first of these principles, is, that the Constitution must be construed as of the time when it is applied, even though it must be so construed in the light of the *general intent and purpose of those who framed it.* In other words, in construing the Constitution, we must bear in mind that the Constitution merely provides general principles of division of power between states and nation, but does not contain any specific line of demarcation whereby one can immediately tell whether a certain concrete matter is one the one side of that line of on the other. This is a self-evident proposition: The Constitution was adopted in 1787, and the controversy herein arose in 1937. The Framers could not possibly have foreseen the concrete problem with which we are confronted here. But we know the kind of government they sought to establish, and the problem before the Court is the correct application of the intent of the Framers with respect to the kind of government they sought to establish to the concrete problem which is involved herein.

In this connection, two things must be remembered,—one is, that the purpose of the Constitution was to establish "a more perfect union"; and the other is, that the moving force in the establishment of the Constitution was the necessity to make this country a *unified whole with respect to commerce.* In considering any question of power of the Federal Government, the Constitution must, therefore, be considered not as an ordinary legal document,—that is to say as a private grant of power from one person to another, such, for instance, as the appointment of an agent for a concrete purpose,—but as establishing a mode of life for the people for whose benefit the Constitution was intended, insofar as their governmental arrangements are concerned. The powers granted by the Constitution to the Federal Government must, therefore, of necessity be continually on the increase with the growth of the country in extent, and the nationalization of its mode of life. This has been recognized from the beginning of the existence of this country as a nation under the Constitution.

It is this thought that is expressed in the classic admonition of John Marshall that—

> "In considering this question, then, we must never forget that it is a Constitution we are expounding."
>
> *McCulloch* v. *Maryland*, 4 Wheat. 316, 407.

The wisdom of this admonition was demonstrated, and its correct application exemplified, in connection with commerce, even though the question arose not under the commerce clause but the admiralty clause of the Constitution. The fundamental change in the admiralty jurisdiction of the Federal Government involved in the cases discussed below was as striking as anything that has ever occurred under the Constitution. The great significance of that occurrence lies in the fact that it involved not a mere enlargement or extension of Federal jurisdiction, but a definite transfer of concrete matters across the line which separates State jurisdiction from Federal jurisdiction, *in face of the fact that concededly the subject involved had been considered by the Framers as being within the power of the States rather than the power of the Federal Government.*

> *Steamboat Thomas Jefferson*, 10 Wheat. 428.
> *Propeller Genesee Chief* v. *Fitzhugh*, 12 How. 443.
> *Jackson* v. *Steamboat Magnolia*, 20 How. 296.

In giving the opinion of this Court in the *Genesee Chief* case, which accomplished the revolution in question, Marshall's great successor said that he was expounding the meaning of the Constitution as it was understood at the time of its adoption, notwithstanding the fact that, concededly, at the time of the adoption of the Constitution admiralty jurisdiction was limited to tidewater. This statement contained neither contradiction nor subterfuge. Chief Justice Taney was stating a correct principle of constitutional interpretation as applied to the subject in hand,—*that principle being, that the great object of the Constitution, to give to the National Government power over national affairs, cannot be defeated by the fortuitous circumstance that a certain*

concrete matter was conceived by the framers of the Constitution as being within the State power and was intended by them to be within the State power as matters then stood. Had matters stood still, the correct meaning of the Constitution would have been the same a half-century after its adoption that it was in 1787. But matters did not stand still. The country had grown in the meantime. Therefore, what was concededly on the State side of the line of demarcation in 1787, didn't belong there any more; and was, therefore, transferred by Congress, with the approval of this Court, to the Federal side of the line. Said this Court in giving the reason for the transfer:

> "These lakes are in truth inland seas. Different states border on them on one side and a foreign nation on the other. A great and growing commerce is carried on upon them between different states and a foreign nation, which is subject to all the incidents and hazards that attend commerce on ocean. Hostile fleets have encountered on them, and prizes been made; *and every reason which existed for the grant of admiralty jurisdiction to the general government on the Atlantic seas, applies with equal force to the lakes.*"
>
> *Propeller Genesee Chief* v. *Fitzhugh*, 12 How. 443, 453.

The best statement of the general principle here involved that we can think of was made by Mr. Justice Matthews speaking for this Court in one of the cases cited further below in another connection. This statement is as follows:

> "It is urged upon us, however, in argument, that the claim made in behalf of the plaintiff in error is supported by the decision of this court in Murray v. Land & I. Co. * * *
>
> "The point in the case cited arose in reference to a summary proceeding, questioned on that account, as not due process of law. The answer was: however exceptional it may be, as tested by definitions and principles of ordinary procedure, nevertheless, this, in substance, has been immemorially the actual law of the land and, therefore, is due process of law. But to hold that such a characteristic is essential to due process of law, would be to deny every quality of the

law but its age, and to render it incapable of progress or improvement. It would be to stamp upon our jurisprudence the unchangeableness attributed to the laws of the Medes and Persians."

Hurtado v. *California*, 110 U. S. 516.

B. The Meaning of the Constitution Changes Not Only With the Growth of the Country's Physical Size, But Also With the Growth of the Complexity of Its Economic Life and the Integration of Its Processes.

The general principles enunciated by this Court in the cases quoted above are particularly applicable in cases arising under the commerce clause of the Constitution. Indeed, it was the commerce aspect of the problem that decided the change in the admiralty jurisdiction of the Federal courts, even though the cases arose under a different clause of the Constitution. And when *facts* are taken into consideration rather than *words*, *McCulloch* v. *Maryland* also involved the commerce of the nation; even though the power invoked in establishing the Bank of the United States was not the commerce clause, and commerce was not made a ground of decision by this Court. The Bank of the United States,—whatever the particular power invoked in its establishment,—was a commercial institution; and its establishment was part of the economic and financial legislation devised and supervised by Alexander Hamilton. But it was only natural that the general principles here invoked should have been enunciated by this Court in cases arising directly under the commerce clause. The first, and in a sense the most comprehensive, statement of those principles, is contained in John Marshall's opinion in *Gibbons* v. *Ogden*. Every word of that famous opinion is, of course, familiar to this Court. But in view of the special plea made in that portion of the briefs of the petitioners dealing with the legislation of the State of New York, and the invocation of the Tenth Amendment as a limit upon the power of the Federal Government in this case, it is well to bear in mind that in *Gibbons* v. *Ogden*, this Court was overruling decisions of the courts of the State of

New York one of which was rendered by one of the greatest jurists ever produced by that State and by this nation. The occasion of the controversy was so important,—the controversy being with the State of New York,—and the authority of the decision reviewed so great, that this Court was impelled to use the following significant language by way of preliminary statement to its decision:

> "The state of New York maintains the constitutionality of these laws; and their legislature, their Council of Revision, and their judges, have repeatedly concurred in this opinion. It is supported by great names—*by names which have all the titles to consideration that virtue, intelligence, and office, can bestow. No tribunal can approach the decision of this question, without feeling a just and real respect for that opinion which is sustained by such authority;* but it is the province of this Court, while it respects, not to bow to it implicitly; and the judges must exercise, in the examination of the subject, that understanding which Providence has bestowed upon them, with that independence which the people of the United States expect from this department of the government."

But neither the conflict with the State of New York nor the authority of the great jurists who rendered the decisions being reviewed were sufficient to obscure the great matter at stake, namely, *the authority of the nation over its commerce.* As a result, this Court announced the latitudinarian or liberal rule which has ever since been applied to this subject. Said Chief Justice Marshall, speaking for the Court:

> "It has been said that these powers ought to be construed strictly. But why ought they to be so construed? Is there one sentence in the constitution which gives countenance to this rule? In the last of the enumerated powers, that which grants, expressly, the means of carrying all others into execution, Congress is authorized 'to make all laws which shall be necessary and proper' for the purpose. But this limitation on the means which may be used, is not extended to the powers which are conferred; nor is there one sentence in the constitution which has been pointed out by the gentlemen of the bar, or which we

have been able to discern, that prescribes this rule. We do not, therefore, think ourselves justified in adopting it. What do gentlemen mean by a strict construction? If they contend only against that enlarged construction which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the constitution, would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of the instrument; for that narrow construction which would cripple the government and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent; then we cannot perceive the propriety of this strict construction, nor adopt it as the rule by which the constitution is to be expounded. * * * If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well-settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction. We know of no reason for excluding this rule from the present case. *The grant does not convey power which might be beneficial to the grantor, if retained by himself, or which can enure solely to the benefit of the grantee, but is an investment of power for the general advantage, in the hands of agents selected for that purpose; which power can never be exercised by the people themselves, but must be placed in the hands of agents, or lie dormant.*"

Gibbons v. *Ogden*, 9 Wheat. 1, 187-189.

It was only natural that such a rule should be resisted as applications of the same to new situations arose from time to time. Economic change is resisted not only by those whose interests lie with the past, but also by those whose habits of mind have been formed in the past. New situations, therefore, arouse not only clashes of interests but also clashes between modes of thought; and the interests opposed to the

change are magnified by the modes of thought which see in every change a dangerous cutting off from ancient moorings possibly leading to disaster. But after the change has been accomplished, those who opposed it are themselves frequently surprised how easily the nation had become adjusted to the change, and occasionally they admit that the change has worked well. Thus the Nation marches on on the road of Progress.

This is well illustrated in the attitude of the legal profession and the courts to problems arising from the introduction of *new instrumentalities* of commerce, in an endeavor to adjust them to a line of demarcation,—or what is thought to be a line of demarcation,—drawn at the time when those instrumentalities were unknown and could not have been comprehended within the scheme of division. The telephone and telegraph are examples in point.

> *Pensacola Tel. Co.* v. *West. U. Tel. Co.*, 96 U. S. 1.
> *West. U. Tel. Co.* v. *Texas*, 105 U. S. 460.
> *West. U. Tel. Co.* v. *James*, 162 U. S. 650.
> *West. U. Tel. Co.* v. *Speight*, 254 U. S. 17.

The first of these cases is interesting not only because it shows a new application of the commerce power which was resisted by old interests and modes of thought relying on old decisions of the courts, but also because it involved the relation of the power of Congress over commerce to existing contracts,—*the decision being that the power of Congress is free of any impediments due to existing contractual relations or rights claimed thereunder.* The facts in that celebrated case are well-known and need not be restated here. But attention should be called to the fact that the gravamen of the argument of counsel for the Pensacola Company was that even if Congress had the power to establish and regulate telegraph companies engaged in interstate commerce, it could not so legislate "as to authorize the appellee to invade the exclusive franchise granted to the plaintiff by the State of Florida". But that plea was of no avail. In giving its decision in favor of the exercise of power by the Federal

Government, and its freedom from impediment by State legislation or contractual obligations, this Court said through Chief Justice Waite:

"The powers thus granted are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stagecoach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate, at all times and under all circumstances. As they were intrusted to the General Government for the good of the nation, it is not only the right but the duty of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily incumbered by state legislation.

"The electric telegraph marks an epoch in the progress of time. In a little more than a quarter of a century it has changed the habits of business, and become one of the necessities of commerce. *It is indispensable as a means of intercommunication but especially is it so in commercial transactions.* The statistics of the business before the recent reduction in rates show that more than eighty per cent. of all the messages sent by telegraph related to commerce. Goods are sold and money paid upon telegraphic orders. Contracts are made by telegraphic correspondence, cargoes secured and the movement of ships directed. *The telegraphic announcement of the markets abroad regulates prices at home*, and a prudent merchant rarely enters upon an important transaction without using the telegraph freely to secure information.

"It is not only important to the people, but to the Government. By means of it, the heads of the departments in Washington are kept in close communication with all their various agencies at home and abroad, and can know at almost any hour, by inquiry,

what is transpiring anywhere that affects the interest they have in charge. Under such circumstances, it cannot for a moment be doubted that this powerful agency of commerce and intercommunication comes within the controlling power of Congress, certainly as against hostile state legislation * * *

"The Government of the United States, within the scope of its powers, operates upon every foot of territory under its jurisdiction. It legislates for the whole nation, and is not embarrassed by state lines. Its peculiar duty is to protect one part of the country from encroachments by another upon the national rights which belong to all."

Pensacola Tel. Co. v. *West. U. Tel. Co.*, 96 U. S. 1.

That the contractual feature of the case was serious, is evidenced by the fact that Mr. Justice Field stressed it in his dissenting opinion. But it is the argument against the extension of the power of Congress that is of main interest to us here, and that portion of Mr. Justice Field's dissenting opinion which deals with that subject is most significant in that regard: Every new application of the power of the Federal Government over commerce was met not only with stubborn opposition, but every argument in opposition was made to the refrain—"what next?" and "where is the limit?". Said Mr. Justice Field:

"*If* by making a contract with a party to carry the mails over a particular road in a State, which thus becomes by Act of Congress for that purpose a post road, Congress acquires such rights with respect to the road that it can authorize corporations of other States to construct along and over it a line of telegraph, *why* may it *not* authorize them to construct along the road a railway, or a turnpike, or a canal, or any other work which may be used for the promotion of commerce? If the authority exist in the one case, I cannot see why it does not equally exist in the other. And if Congress can authorize the corporations of one State to construct telegraph lines and railways in another State, it must have the right to authorize them to condemn private property for that purpose. The Act under consideration does not, it is true, provide for such condemnation; but if the

right exist to authorize the construction of the lines, it cannot be defeated from the inability of the corporations to acquire the necessary property by purchase. The power to grant implies a power to confer all the authority necessary to make the grant effectual. It was for a long time a debated question whether the United States, in order to obtain property required for their own purposes, could exercise the right of eminent domain within a State. It has been decided, only within the past two years, that the government, if such property cannot be obtained by purchase, may appropriate it, upon making just compensation to the owner, Kohl v. U. S., 91 U. S. 367; but never has it been suggested that the United States could enable a corporation of one State to condemn property in another State, in order that it might transact its private business there."

But less than ten years later, Mr. Justice Field delivered the unanimous opinion of this Court in the *Pendleton* case, holding unconstitutional a statute of the State of Indiana, which attempted to regulate the delivery of telegraph messages *within that State*. In his opinion in that case, Mr. Justice Field quoted with approval the following passage from the opinion of this Court in the Texas case:

> "A telegraph company occupies the same relation to commerce as a carrier of messages, that the railroad company does as a carrier of goods. Both companies are instruments of commerce, *and their business is commerce itself*. They do their transportation in different ways, and their liabilities are in some respects different; *but they are both indispensable to those engaged to any considerable extent in commercial pursuits.*"
>
> *West. U. Tel. Co.* v. *Texas*, 105 U. S. 460.
> *West. U. Tel. Co.* v. *Pendleton*, 122 U. S. 347.

The above quoted passage is significant in that it shifts the ground of the exercise of Federal power from the "post roads" provision of the Constitution to that which gives the National Government power over commerce,—or at least shifts the emphasis. This is important in our connection,

because in the case at bar the object of the Act of Congress is to preserve and protect interstate commerce, and the service involved in the dispute furnishes the motive-power for the operation of the Western Union Telegraph Company and Postal Telegraph Company both in their interstate and foreign commerce.

The last of the group of cases cited above dealing with the telegraph is significant in another respect,—a respect which bears directly on the problem of division of power between state and nation. It is usually assumed,—and the assumption underlies much of the reasoning of the briefs for the petitioners herein,—that the exercise of power of Congress is an interference with the local affairs of the States wherever the interstate and intrastate activities overlap or are commingled, thereby depriving the State of legitimate power to regulate their own affairs. But that is clearly not so; The true principle is, that in such situations the States are only deprived of the right to *so* regulate local affairs as to interfere with the exercise of Federal power. But the States may pass any legislation either in *aid* of the Federal power, or in the proper regulation of their local affairs, provided it is not in conflict with the exercise of power by the Federal Government over the same subject. This principle was well recognized in the decisions of this Court in the period preceding the Civil War.

Prigg v. *Pennsylvania*, 16 Peters 539.
Moore v. *Illinois*, 14 How. 13.

And it was reaffirmed in connection with the telegraph as an instrumentality of commerce in—

West. U. Tel. Co. v. *James*, 162 U. S. 650.

C. With the Growth of the Complexity and Integration of Commerce, the Control of Concrete Means or Relations May Be Transferred from One Side of the Line of Demarcation to the Other.

The discussion in the preceding sections dealt mainly with new situations arising either from the physical growth of the

country, or the invention or introduction of new instrumentalities of commerce. Insofar as it indicated transfers "across the line," it was mainly a mental operation, in the sense that it did not involve the transfer of actual physical objects, but only a mental determination that certain objects or situations which would theretofore have been thought to be on the one line belonged on the other. But there is a line of cases in which there was an actual physical transfer, so to say, from one side of the line of demarcation to the other, —the line of cases which deals with ferries and ferriage.

Fanning v. *Gregoire*, 16 Howard 524;
Conway v. *Taylor*, 1 Black 603;
Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S. 196;
N. Y. C. & H. R. R. Co. v. *Hudson County*, 227 U. S. 248.

The first two of these cases affirmed the proposition, universally held by the profession until long after the Civil War, that ferries and ferriage were "local" in their nature, and, therefore, entirely within the domain of state jurisdiction. The revolution effected by the *Gloucester Ferry Case* was as great in the domain of this branch of the law as that effected by the *Genesee Chief Case* in the admiralty law. In a sense, indeed, it was much greater,—for the *Genesee Chief* and *Steamship Magnolia* cases dealt not only with a new situation but with new *matters*. Not only the shipping on the Great Lakes, but those lakes themselves were hardly present in the minds of the framers of the Constitution. The shipping in question didn't exist at all, and the Great Lakes only existed as part of the continent upon which the United States was situated,—they were certainly not part of the country which adopted the Constitution in any presently real sense. But the Gloucester ferry, or its predecessor, was certainly there when the Constitution was adopted: and so was the ferry involved in the Hudson County case, or its predecessor. And it is beyond doubt that when the Constitution was adopted these ferries were considered, and by the Constitution *meant* to be, within the domain of state power. Yet,

they are not so now,—and mainly because of decisions of this Court. That does not mean that this Court had misinterpreted the Constitution. On the contrary, there can be no doubt of the fact that this Court correctly interpreted the meaning of the Constitution by applying the principle which had been applied earlier in the admiralty-jurisdiction cases. For the true *intent* of the framers of the Constitution and the *meaning* of the document framed by them, is, that ferries and ferriage were in 1787 within the domain of state jurisdiction, and should remain such as long as the *situation* remains the same,—that is to say, as long as their *relations to commerce* remain substantially the same; but that they should become part of the Federal domain when the situation had changed to such an extent as to make ferriage, at least in certain instances, a matter of national *concern* because of its relation to national commerce.

A brief examination of these cases will, therefore, prove enlightening.

Conway v. *Taylor* was a bitterly contested case, and was argued with great learning and ability by two of the leading lawyers of the day, Henry Stanbery and Edward M. Stanton. The opinion of this Court was unanimous,—to the effect that ferries are wholly "local" even though they involve ferriage across rivers forming the boundary line between two states; and that the regulation of these ferries is, therefore, entirely within the competence of the abutting states. The concluding portion of the opinion of this Court in that case is particularly significant. Said the Court:

> "The counsel for the appellees has invoked the authority of Cooley v. Wardens of Phila., 12 How., 299, in which a majority of this court held that, upon certain subjects affecting commerce as placed under the guardianship of the Constitution of the United States, the States may pass laws which will be operative till Congress shall see fit to annul them.
>
> "In the view we have taken of this case, we have found it unnecessary to consider that subject.
>
> "There has been now nearly three-quarters of a century of practical interpretation of the Constitution. During all that time, as before the Constitution,

had its birth, the States have exercised the power to establish and regulate ferries; Congress never. We have sought in vain for any Act of Congress which involves the exercise of this power.

"That the authority lies within the scope of 'that immense mass' of undelegated powers which 'are reserved to the States respectively,' we think too clear to admit of doubt.

"We place our judgment wholly upon that ground."

Conway v. *Taylor*, 1 Black 603, 635.

But twenty-three years later this Court unanimously decided the other way in the *Gloucester Ferry Case*, transferring jurisdiction over ferries and ferriage crossing rivers forming boundary lines between States across the dividing line between Federal and State jurisdiction,—and that without the aid of Congress. In *Conway* v. *Taylor* this Court held that the circumstance that Congress had not exercised its power over this class of ferriage was proof of the fact that it possessed no such power. During the twenty-three years intervening between the decision of the two cases Congress had not acted. Nevertheless, this Court held in the *Gloucester Ferry Case* that the non-action of Congress was proof not of lack of power, but rather as proof that Congress intended that commerce to remain free. But not only were the decisions not necessarily in conflict, even the reasoning was not necessarily contradictory. Before the Civil War Congress may well have refrained from acting because of a belief that it had no jurisdiction, if the problem ever presented itself to the collective mind of Congress. The chances are that because of the situation then existing no thought whatever was given to the subject. But by 1883 the matter had become of national importance. The silence of Congress in view of the new situation certainly permitted the inference that Congress intended the commerce to be free.

Of one thing there certainly can be no doubt,—and that is that something had happened to change the meaning of the Constitution with respect to ferries and ferriage. The country still remained the same as far as extent is concerned.

The ferries, or at least the rivers which they crossed, were still in the same place. But the nature of the commerce of the nation, its *integration*, had become such as to make this class of ferries a matter of *national interest and concern*. This transferred the power to regulate this class of ferriage from the States to the Federal Government. It gave a *new meaning* to the Constitution in accordance with the *old principles* applicable to the construction of that document.

The last of the group of cases dealing with ferries is particularly in point in the controversy now before this Court. The *Gloucester Ferry Case* merely decided the general principle, and made a certain application of the same,—namely that ferriage between states being interstate commerce, the abutting States could not tax that commerce. But the problem of *regulation* is different from that of *taxation*. The States cannot tax interstate commerce, but they can regulate it when it is commingled with intrastate commerce, in the absence of Federal regulation; and in certain respects the States may even extend their supervision to purely interstate commerce if the purpose is not to *regulate* but to exercise what is commonly called their "police power." The *Gloucester Ferry* decision did not, therefore, exclude the States from regulating interstate ferriage insofar as it had been left unregulated by Congress, where regulation is necessary in order to protect the "local" interests. The Hudson River ferry case did not involve taxation but regulation. It was claimed, however, that Congress had regulated that commerce by enacting the Interstate Commerce Act of 1887, which included "railroad ferries" within the purview of that Act. The Interstate Commerce Commission had not, in fact, acted with respect to the subject matter. But it was claimed that because of the Interstate Commerce Act, the Interstate Commerce Commission was the only one that *could* act. In this connection certain facts are important. The ferry in question was not one which carried any trains of the railroad involved. The terminal of the West Shore Railroad, the railroad in question, was in Weehawken, New Jersey. But the railroad company operated the ferry in question as an

adjunct of its railroad, and the ferry was used for the transportation of passengers from the railroad terminal in New Jersey across the Hudson River to the New York shore. But it was not used exclusively for that purpose,—the large majority of the passengers using the ferry were not railroad passengers, but "local," i. e., foot-passengers travelling to and from the City of New York. The regulation of the State authority in question related solely to these "local" passengers, and had nothing to do with the railroad passengers. Nevertheless, this Court held the local regulation void at the instance of the railroad company, because of the *relation* of the ferry to interstate commerce. The problem of the nature of the traffic across the Hudson River as, in itself, interstate commerce, was not involved,—because that was clearly not within the purview of the Act of Congress. The following language of this Court, speaking through Chief Justice White, is important in our connection:

> "We think—said this Court—the argument by which it is sought to limit the operation of the Act of Congress to certain elements only of the interstate commerce embraced in the business of ferriage from state to state is wanting in merit. * * * Indeed, this conclusion is inevitable since the assumption of a purpose on the part of Congress to divide its authority over the elements of interstate commerce intermingled in the movement of the regulated interstate ferriage would be to render the national authority inefficacious by the confusion and conflict which would result. The conception of the operation at one and the same time of both the power of congress and the power of the states over a matter of interstate commerce is inconceivable, *since the exertion of the greater power necessarily takes possession of the field, and leaves nothing upon which the lesser power may operate.*"
>
> *N. Y. C. & H. R. R. Co. v. Hudson County*, 227 U. S. 248, 264.

D. Where Interstate and Intrastate Activities Are Commingled, the Federal Power Extends to the Intrastate Activities as Such, Whenever They Affect the Interstate Activities.

It is now well settled by the adjudications of this Court that whenever interstate activities involved in or relating to commerce are commingled with intrastate activities, the Federal power extends to the regulation of the intrastate activities as such, if that becomes necessary in the course of the regulation of the interstate activities. This principle underlies the decisions of this Court with respect to the regulation of intrastate rates of common carriers and the labor relations of interstate carriers.

Railroad Commission v. *Texas & P. Ry. Co.*, 229 U. S. 336.
Simpson v. *Shepard*, 230 U. S. 352.
Houston etc. Ry. Co. v. *U. S.*, 234 U. S. 342.
Railroad Commission v. *Chicago, B. & Q. Ry. Co.*, 257 U. S. 563.
New York v. *United States*, 257 U. S. 591.
B. & O. Ry. v. *I. C. C.*, 221 U. S. 612.
Southern Ry. Co. v. *U. S.*, 222 U. S. 20.
Mondou v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S. 1.

The first five of these cases deal with rates and the last three with labor relations, but the principle involved is the same. We shall deal at this point with the rate cases only, since the labor-relations cases will be adverted to further below.

The five rate cases may be divided into two groups,—the first three relate to *intra*state rates as affecting *inter*state rates, while the last two cases deal with *intra*state rates as part of the general economic problem of the maintenance of an adequate railway system. A brief discussion of this topic commences best with the consideration of the second and third cases cited above, the so-called *Minnesota Rate Cases* and *Shreveport Rate Cases*,—the two sets of cases together furnishing the best illustration of the principle under discussion. They furnish, in fact, a perfect illustration of both,

the "reserve powers" of the States and of the limitation of those powers by the powers of the Federal Government.

The Minnesota Rate Cases (*Simpson* v. *Shepard, supra*) and the accompanying Missouri Rate Cases,

Knott v. *Chicago, B. & Q. Ry. Co.*, 230 U. S. 474,

upheld certain state legislation, and the orders of state regulatory agencies, with respect to intrastate rates, against attack on the ground that the rates thus prescribed worked discrimination against interstate shippers of the carriers in question, whose business was that of carriers of both interstate and intrastate commerce. Those cases, involving some twenty odd railroads, had been elaborately argued, and were disposed of by this Court in very elaborate and careful opinions, delivered by the present Chief Justice on behalf of a unanimous court. But such is the power of the traditional antinomy "Here the States—here the Nation" over the legal mind, that a part at least of the profession completely misapprehended the import of those decisions. The grounds upon which those cases were decided do not concern us here, but it is of interest to note that the distinguished counsel for one of the railroads involved opened their argument with the statement: "The act to regulate commerce does not confer upon the Interstate Commerce jurisdiction or authority to regulate or control purely intrastate rates, and the order complained of is void for lack of jurisdiction"—citing the *Minnesota Rate Cases* and the *Missouri Rate Cases* as authority for this proposition. And another group of distinguished counsel, appearing for another railroad, opened their brief with the following statement:

> "Since the appeal in this case was perfected, the cases of Minnesota Rate Cases (Simpson v. Shepard), 230 U. S. 352, and Missouri Rate Cases (Knott v. Chicago, B. & Q. R. Co.), 230 U. S. 474, have been submitted and decided by this court, and we submit that the decision of this court in these cases is decisive of the questions involved in the case at bar, *and renders unnecessary the further citation of authorities.*"

But this Court upheld the orders of the Interstate Commerce Commission, in an opinion written by the same member of the Court, definitely establishing the power of the Interstate Commerce Commission over purely *intrastate* rates whenever they adversely affect interstate rates. Said the Court in this case:

> "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. *It is of the essence of this power that, where it exists, it dominates.* * * * *By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise, and to protect the national interest by securing the freedom of interstate commercial intercourse from local control.* * * *
>
> "Congress is empowered to regulate,—that is, to provide the law for the government of interstate commerce; to enact 'all appropriate legislation' for its 'protection and advancement' (The Daniel Ball, 10 Wall. 557, 564); to adopt measures "to promote its growth and insure its safety" (Mobile County v. Kimball, 102 U. S. 691, 696, 697); "to foster, protect, control, and restrain" (Second Employers' Liability Cases [Mondou v. New York, N. H. & H. R. R. Co.], 223 U. S. 1, 47, 53, 54). * * * The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter, or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority, and the state, and not the nation, would be supreme within the national field. * * *
>
> "In Baltimore & O. R. Co. v. Interstate Commerce Commission, supra, the argument against the validity of the hours of service act (March 4, 1907, chap. 2939,

34 Stat. at L. 14, 15, U. S. Comp. Stat. Supp. 1911, p. 1321) involved the consideration that the interstate and intrastate transactions of the carriers were so interwoven that it was utterly impracticable for them to divide their employees so that those who were engaged in interstate commerce should be confined to that commerce exclusively. Employees dealing with the movement of trains were employed in both sorts of commerce; but the court held that this fact did not preclude the exercise of Federal power. As Congress could limit the hours of labor of those engaged in interstate transportation, it necessarily followed that its will could not be frustrated by prolonging the period of service through other requirements of the carriers, or by the commingling of duties relating to interstate and intrastate operations. Again, in Southern R. Co. v. United States, 222 U. S. 20, 26, 27, 56 L. ed. 72, 74, 75, 32 Sup. Ct. Rep. 2, 3 N. C. C. A. 822, the question was presented whether the amendment to the safety appliance act (March 2, 1903, 32 Stat. at L. 943, chap. 976, U. S. Comp. Stat. Supp. 1911, p. 1314) was within the power of Congress in view of the fact that the statute was not confined to vehicles that were used in interstate traffic, but also embraced those used in intrastate traffic. The court answered affirmatively, because there was such a close relation between the two classes of traffic moving over the same railroad as to make it certain that the safety of the interstate traffic, and of those employed in its movement, would be promoted in a real and substantial sense by applying the requirements of the act to both classes of vehicles. So, in the Second Employers' Liability Cases, supra, it was insisted that while Congress had the authority to regulate the liability of a carrier for injuries sustained by one employee through the negligence of another, where all were engaged in interstate commerce, that power did not embrace instances where the negligent employee was engaged in intrastate commerce. The court said that this was a mistaken theory, as the causal negligence, when operating injuriously upon an employee engaged in interstate commerce, had the same effect with respect to that commerce as if the negligent employee were also engaged therein. * * *

"While these decisions sustaining the Federal power relate to measures adopted in the interest of the safety of persons and property, they illustrate the principle

that Congress, in the exercise of its paramount power, may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. This is not to say that Congress possesses the authority to regulate the internal commerce of a state, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled."

Houston, E. & W. T. R. Co. v. *U. S.*, 234 U. S. 342, 350-353.

The principle was thus finally established that the power of the Federal Government to regulate commerce extends to the regulation of purely *intra*state rates. But the dispute arose again when an attempt was made by the Federal Government to exercise that power not for the purpose of preventing discrimination but for the purpose of raising revenue for the railroads. That power was definitely established by the other two cases of the group cited above dealing with railroad rates.

Railroad Commission v. *Chicago, B. & Q. Ry. Co.*, 257 U. S. 563.

New York v. *United States*, 257 U. S. 591.

But there is still another aspect of *intra*state rates which should be considered here, because of its great significance in connection with the problems here under consideration. That is the situation dealt with in the first of that group of cases (*Railroad Commission* v. *Texas & P. Ry. Co.*). The significance of that case lies in the fact that, unlike the other rate cases, it was not a problem of the relation of *intra*state rates to the *inter*state rates of the same carrier. In fact, in so far as the principle of the case was concerned, *the carrier in question was not engaged in interstate commerce at all.*

In that case, not only was the rate in question a purely *intra*state rate, but it had no relation whatever to any interstate rate of the carrier involved or any other railroad carrier. Nor did the case involve any problem of revenue. The char-

acter of the railroad as an interstate carrier was therefore of no relevancy, if such was the case. From a purely "legal" point of view question the shipment was as purely an *intra*state transaction as could possibly be imagined. And, as already stated, as far as the principle of the case is concerned, the carried was a wholly *intra*state carrier. Nevertheless, it was held that that purely *intra*state rate established by a wholly *intra*state carrier was subject to the regulatory power of the Federal Government because of the intent of the shipper that after the termination of this particular shipment,—and of the contract under which it was shipped,—the commodity in question should become part of foreign commerce. *This intention and purpose* of the shipper, this Court held, was sufficient to make it a part of interstate commerce, and bring it within the regulatory power of the Federal Government, because the *economic effect* of the rate in question on foreign commerce did not depend on the technical-legal nature of the transaction, *but on its commercial nature.*

All of the arguments made by petitioners herein were urged upon this Court in that case; and, we respectfully submit, with much more reason. For in that case there was no *necessary* connection between the local transportation and the foreign commerce which it was supposed to effect. The local transportation could have been stopped without in any way affecting the foreign commerce. *The service itself was concededly local, and so was the contract under which it was rendered.* The following statement from the counsel for the appellants in that case correctly summarized the situation. Said he:

> *"The service rendered by the railway companies is wholly within the state. It has no contractual or necessary relation to foreign transportation.* It is manifestly preliminary thereto, independently contracted for, not necessarily connected therewith. Locality therefore determines the jurisdiction, unless it is shown that though the local movement is actually within, it is legally outside the state."

And this Court decided that because its influence upon foreign commerce *it was legally outside the State.*

Railway Commission v. Texas & P. R. Co., 229 U. S. 336.

In conclusion we desire to urge upon the Court, in considering the relation of the activities of the Consolidated Edison System to the commerce of the nation, in all its aspects, the principle applied by this Court in

Munn v. *Illinois*, 94 U. S. 113.

It is true that that case did not deal with the problem immediately here under consideration,—the division of power between state and nation. It did deal, however, with the analogous problem of the division of power between the individual and the state. And the general principle there laid down by this Court,—the principle which we invoke here,—is that matters which would otherwise be within the control of the individual pass into the "public domain" and become matters for state regulation when they acquire a "monopoly position" with respect to commerce. The "monopoly position" of Consolidated Edison with respect to the commerce of the nation, we respectfully submit, is far greater than that of the owners of the grain-elevators involved in the *Munn Case*. The Consolidated Edison does not merely stand "in the very gateway of commerce" with respect to interstate and foreign commerce, but it controls the entire nervous system of that commerce, which would be palsied by an interruption of the Consolidated's activities. Clearly, its activities cannot be left to the regulation of any single member of the Union,—certainly that aspect of its activities which bears upon their *uninterrupted continuance*, must be controlled by the Federal Government in the interests of the entire nation.

POINT II.

The assumption by the National Labor Relations Board of jurisdiction in this case was in accordance with the decisions of this Court upholding the constitutionality and defining the scope of the National Labor Relations Act.

It is now settled by the recent adjudications of this Court that the question of the jurisdiction of the National Labor Relations Board must be determined not according to some formula dependent upon the nature of the business involved, but rather as the solution of the practical problem whether or not a stoppage of or interference with that business by industrial strife would injuriously affect interstate commerce. In the case of *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation* this Court said:

> "We have often said that interstate commerce itself is a practical conception. It is equally true that interference with that commerce must be appraised by a judgment that does not ignore actual experience."

This Court thus decisively rejected the notion which had theretofore prevailed in the legal profession that interstate commerce meant something that had a relation to transportation, and held that in so far as the regulation or supervision of the employer-employee relation is concerned Federal jurisdiction extends to everything that may interfere with or burden interstate commerce *even though the activity in which the employer and employees are engaged is in itself not interstate commerce.* As this Court has said in another portion of its opinion in the *Jones & Laughlin* case:

> "The close and intimate effect which brings the subject within the reach of Federal power may be due to activities in relation to productive industry *although the industry when separately viewed is local.*"
>
> *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 38.

And again, quoting from the first *Coronado* case:

> "'If Congress deems certain recurring practices, *though not really part of interstate commerce,* likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint.'"

As a result of these decisions it is now settled that neither size, geographical location, nor the nature of the commerce or industry, is in itself decisive of the question of Federal jurisdiction, although all of these factors must be considered, and the decision must be based upon a consideration of all of them. It is with a view to these principles that we now turn to a consideration of the activities of the employer companies involved herein as disclosed by the Record.

A. The Magnitude of the Activities Involved and Their Relation to the Commerce of the Nation.

The companies involved herein form and are operated as one system. This system supplies practically all of the electricity and most of the gas used for light, heat and power in the City of New York and Westchester County. It also supplies, through the New York Steam Corporation, all of the steam power used in the City of New York by business concerns who do not own their own steam plants. The *magnitude* of its operations can be judged from the fact that its operating revenues in the year 1936 amounted to $234,825,191.37, while the number of employees exceeded 40,000. The number of employees paid by the week alone amounted to 39,876 as of April 17, 1936. By far the largest branch of its business is the supply of electric current, the sales of which alone accounted for more than 75% of its operating revenues in 1936. The extent of its electric service can be judged from the fact that in December, 1936, it supplied about 2,324,800 individual consumers. The *nature* and *ramifications* of its business can be judged from an analysis of the business done by Consolidated Edison Company of New York, Inc., the principal electric service company of the system, in the year 1936, as given in the table printed on page 1346 of the Record (Stipulation, Board's Exhibit 2),

which shows the following uses of the electric energy sold by that company in that year: Residential, 12.13%; General Uses, including Commercial, 26.00%; Religious Purposes, 0.66%; Wholesale and Other Uses, 38.74%; Railroads, 10.61%; Municipal Street Lighting, 1.92%; Miscellaneous Governmental Uses, 9.94%.

The classification given above, which was furnished by the companies, conceals the real magnitude of the *business uses* of the electric current supplied, since most of it is hidden in the two categories labeled "General Uses" and "Wholesale and Other Uses." We can therefore only guess at it. The same is true of the business uses to which the supply of gas furnished by the System is put. On the other hand, the steam sold by the New York Steam Corporation, which amounted in the year 1926 to $10,761,341.04, was used entirely for business purposes. The number of business concerns to whom this steam was supplied, who were dependent on this supply for the continuance of their operations, amounted at the end of that year to 3,050.

As some basis for a guess as to the amount of business (exclusive of governmental and railroad business) dependent on the electric service of the Consolidated Edison System, attention is called to the fact that according to the table already referred to, giving an analysis of the Consolidated Edison Co. of New York, Inc., which services New York City exclusively, the two categories of "General Uses" and "Wholesale and Other Uses" account for nearly 65% of all the electric energy sold by that company. Under the term "Wholesale" are included apartment houses, loft buildings, and industrial establishments. These comprise by far the largest single class of users. The next largest, that of "General Uses," which accounts for 26% of the consumption of electric energy in New York City, includes, in addition to commercial consumers, educational and charitable institutions, and hospitals. As the consumption of these institutions taken together cannot account for a very large proportion of the 26% grouped under "General Uses," it is apparent that by far the largest consumption in this classification must be by commercial consumers, of whom there were about 400,000.

The rubric "Miscellaneous Governmental Uses" includes the electric energy whereby the New York City Municipal Subway is operated. "Municipal Street Lighting" apparently includes, beside the lighting of the streets in New York City and Westchester municipalities, the highways and traffic signals in Westchester County, which light and regulate the atuomotive interstate traffic which passes through these highways, whether private or commercial. This brings us to the points of *direct* relation of the business of the Consolidated Edison System to interstate commerce. A long,—though by no means exhaustive,—list of governmental and private concerns directly engaged in Federal or interstate services is given under paragraph 67 of the Stipulation (R. 1375-1387). These include:

Federal Government agencies.
Western Union Telegraph Co.
Postal Telegraph Co.
Radio Corporation of America.
Columbia Broadcasting System.
New York Telephone Co.
Dow-Jones Tickers.
New York Stock Exchange.
Floyd Bennett Airfield.
Ferry slips on Hudson River from which ferries operate between New York and New Jersey.
Lighthouses and other aids to navigation in New York Harbor.
Railroad and steamship lines.

The last item requires a little further examination. We have already stated that the "System" supplies the electric energy for the operation of the Municipal Subway in New York City. It also supplies the electric power for the operation of the subway, elevated and street surface railroad lines of the Brooklyn-Manhattan Transit System. In addition, it supplies the electric power for the *Hudson and Manhattan Railway,* commonly known as the Hudson Tubes, *running from New York City to points in New Jersey,* and for the

Holland Tunnel, which constitutes one of the principal avenues for automotive traffic *between New York and New Jersey.* It also supplies the electric power for the lighting and operation of the Grand Central Station and yards which is the New York terminus of the New York Central, and N. Y., N. H. & H. Railroad lines, *and all of the power used in operating the electrified portions of these systems in New York State.* The New York Steam Corporation supplies *the power used to operate the switches in the tunnel of the Pennsylvania Railroad under the Hudson River.* The System also supplies electric current for a majority of the trans-Atlantic and coastal steamship companies having termini in New York City for lighting of piers, freight-handling, and related uses.

With these facts in mind it seems like a sheer waste of time to discuss at length the question of jurisdiction. Even under the narrowest possible definition of interstate commerce,—even if that were confined solely to interstate *transportation,*—there could be no doubt but that the business of the employers herein is such that its interruption would be an interference with and a serious burden upon interstate commerce. In this connection it must be remembered that the problem presented in this class of cases is never whether or not *the employer* is *engaged* in interstate commerce. That was the contention put forward and definitely rejected by this Court in the group of cases decided April 12, 1937. We have, therefore, in the statement of facts with reference to the activities of the companies involved herein deliberately left out some rather important facts relating to the purchase by them of materials in other States and transported to them in interstate commerce, and the sale by them of certain by-products in interstate commerce. As we view the law, these facts,—while important enough, and probably sufficient in themselves to give the National Labor Relations Board jurisdiction,—are relatively unimportant in this case. As we view the situation,—the combination of law and fact involved in this case,—the interference with and burden upon interstate commerce which would result from a labor dispute between the Consolidated Edison System and its employees

would be much greater from a cessation of any of its *services* than from a cessation of its business either by way of purchases of raw materials or sales of commodities. We therefore consider the technical nature of the *business* conducted by the companies a relatively subordinate matter, which dwindles into insignificance beside the really important question,—*the effect upon interstate commerce of a cessation of the services involved.*

Nor have the recent decisions of this Court introduced any new doctrine in this respect. As already pointed out in an earlier portion of this brief, the concept of interstate commerce varies in accordance with the problem in hand. It is not the same for the purpose of State *taxation*, on the one hand, and for the purpose of *regulation*, on the other. Nor is it the same for the purpose of *regulation* and for the purpose of "doing business." The doctrine established, or rather clarified, by the recent decisions of this Court, is, that, in considering the question of the power of the Federal Government to regulate interstate commerce,—upon which the problem of jurisdiction of the National Labor Relations Board depends,—the problem must be approached not only from the angle of the business under consideration as an *activity*, but also, and perhaps primarily, from the angle of the interference with *commerce generally* which would result from its cessation.

Another point made clear by the recent decisions of this Court, is that in considering these problems the nature of the activity itself is wholly immaterial, and the only thing to be considered is its *relation* to interstate commerce. As already pointed out, this is a familiar principle of rate-regulation. In view, however, of the persistent recurrence of the argument on petitioners' brief to the alleged "local character" of the activity or service involved, we shall quote another passage from the decision of this Court in the *Jones & Laughlin* case, the passage reading:

> "The close and intimate effect which brings the subject within the reach of Federal power may be due to activities in relation to productive industry although the industry when separately viewed is local. This

has been abundantly illustrated in the application of the Federal Anti-Trust Act. In the Standard Oil Co. Case, 221 U. S. 1, and American Tobacco Co. Case, 221 U. S. 106, that statute was applied to combinations of employers engaged in productive industry. Counsel for the offending corporations strongly urged that the Sherman Act had no application because the acts complained of were not acts of interstate or foreign commerce, nor direct and immediate in their effect on interstate or foreign commerce, but primarily affected manufacturing and not commerce. 221 U. S., pp. 5, 125. Counsel relied upon the decision in United States v. E. C. Knight Co., 156 U. S. 1, 39 L. ed. 325, 15 S. Ct. 249. The Court stated their contention as follows:

"'That the act, even if the averments of the bill be true, cannot be constitutionally applied, because to do so would extend the power of Congress to subject dehors the reach of its authority to regulate commerce by enabling that body to deal with mere questions of production of commodities within the States.' And the Court summarily dismissed the contention in these words: 'But all the structure upon which this argument proceeds is based upon the decision in United States v. E. C. Knight Co., supra. The view, however, which the argument takes of that case and the arguments based upon that view have been so repeatedly pressed upon this court in connection with the interpretation and enforcement of the Anti-Trust Act, and have been so necessarily and expressly decided to be unsound as to cause the contentions to be plainly foreclosed and to require no express notice.' (Citing cases.) 221 U. S., pp. 68, 69."

Tested by the test of its *effect upon interstate commerce*,—the only test decisive of the question at bar,—even the Jones & Laughlin Steel Corporation dwindles into insignificance when compared with the Consolidated Edison System. Serious, and even "catastrophic", though the closing of the business of the Jones & Laughlin Steel Corporation might be, the catastrophe of such a closing would be as nothing in comparison with the catastrophic consequences of the cessation of the business of the Consolidated Edison System. And the catastrophe would not *be avoided in the least* by the fact

that from a certain technical-legal point of view the business of the Consolidated Edison System might be termed "local". Nor by the fact that from another technical-legal point of view, or even technical-physical point of view, the electric companies "deliver" their electric current within the State of New York. Neither the legal cobwebs nor the imaginary physical lines could prevent the catastrophe which might ensue as the consequence of a dispute between the Consolidated Edison System and its employees. The legal cobwebs based on imaginary physical breaks have been brushed aside once and for all by the following language of this Court in its opinion in the *Jones & Laughlin* case:

> "Giving full weight to respondent's contention with respect to a break in the complete continuity of the 'stream of commerce' by reason of respondent's manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far-flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum."

Both the catastrophe which might result, and the legal vacuum in which we are asked to consider it, are magnified a thousand-fold in the case at bar. Large as it is, the Jones & Laughlin Steel Corporation is a pygmy compared with the Consolidated Edison System. But the question of size is relatively unimportant. More important by far is the nature of the activities in which the Consolidated Edison System is engaged,—*the nature of the services which would be interrupted* if a dispute between the Consolidated Edison System and its employees resulted in a strike. In speaking of the Jones & Laughlin works in Pittsburgh and Aliquippa, this Court said, quoting from the findings of the National Labor Relations Board, that they "might be likened to the heart of a self-contained, highly integrated body." That "body"

was the fourth largest steel producing concern in the United States. The steel industry is one of the most important in the United States. But it is, after all, only one of the industries of the United States. But New York City, which depends for its *light, heat* and *power* upon the uninterrupted operations of the Consolidated Edison System, may be likened to the brain or nerve center, if not of the entire *industrial system* of the nation, certainly of its entire *commercial system*. And it is *commerce*, rather than *industry*, that is the particular subject and concern of the constitutional provision under which the National Labor Relations Board operates. The commerce and industry of the nation would be seriously affected by the "closing" of the Jones & Laughlin Steel Corporation's operations. Yet neither *national industry* nor *national commerce* would come to an end, or be seriously "interfered" with,—although they would be greatly "burdened" in a legal sense. But it is difficult to imagine *national industry functioning properly, or interstate commence going on at all*, except in a most disorderly and desultory fashion, if New York City were left without *light, heat* or *power* for its subways and elevated lines, and the elevators in its office buildings; with its post offices, telegraph offices, Stock Exchange, and all private offices, closed,—as they would have to be if the Consolidated Edison System ceased its operations.

B. By Reason of the Nature of the Services Performed by It, the Consolidated Edison System Is an Agency of Interstate Commerce.

The foregoing argument proceeded entirely from the point of view of the *magnitude* of the effect of the cessation or interruption of the operations of the Consolidated Edison System upon the commerce of the Nation. So far we have considered these activities as a whole, and irrespective of the services rendered to any particular portion of the nation's commerce, because we believe that those considerations are primary in a case like the present one, and should be given first consideration. Nevertheless, there are other aspects which must be taken into consideration,—aspects resulting

from the services rendered by the Consolidated Edison System to different parts or portions of the nation's commerce. We respectfully submit that when thus considered, the Consolidated Edison System is itself an *Agency* of interstate commerce, because its activities directly affect interstate commerce. These activities would therefore bring it within the purview of the National Labor Relations Act and the jurisdiction of the National Labor Relations Board even if they were not part of the giant system which we have just been contemplating. We are now addressing ourselves particularly to the activity of the Consolidated Edison System in furnishing the *motive-power* which sets in motion the trains of the New York Central Railroad and other interstate carriers, and the activities of the New York Stock Exchange, Western Union Telegraph Company, and the other important instrumentalities of interstate and foreign commerce, and of the governmental agencies enumerated above. These activities are of such a nature as to make the operations of the employers herein subject to the control of the Federal Government, quite irrespective of the other aspects of the case.

It is clear that the *motive-power* which sets in motion the through train between New York City and Chicago is as much an instrumentality of interstate commerce as the switch which turns on this power; and that the worker who produces this power and controls its continued flow is as much an integral part of interstate commerce as the man who turns on the switch which connects it with the train. Now, it is undisputed that the Federal Government has the power to control the employer-employee relations of the man who turns on the switch which starts this train on its course, and that power has been actually exercised by the Federal Government with the approval of this Court ever since the decision in the Second Employers' Liability Case. In fact, the principle involved has been established before that, even though the earlier exercises of the power in question may have been motivated not so much by a consideration of the welfare of the man at the switch as the safety of the travelling public and the efficiency of the instrumentality involved.

Baltimore & O. Railway Co. v. *I. C. C.*, 221 U. S. 612.
Southern Ry. Co. v. *U. S.*, 222 U. S. 20.
Mondou v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S. 1.

But the same considerations apply in the case at bar. In legislation of this kind, consideration for the man involved and consideration for the commerce involved are really one and the same thing. As the opinions of this Court in the cases just cited show, the two are so inextricately blended that the one necessarily affects the other. Except, that, the objects and purposes of the National Labor Relations Act are more directly related to the protection of *commerce* and its *efficiency* than are the statutes involved in the earlier cases, for this last statute deals directly with the *protection of interstate commerce against interruptions*. Clearly, if the Federal Government has the power to legislate upon the rights of the switchman who turns on the switch at the Grand Central Station in New York City which sets in motion the instrumentality of interstate commerce, so as to protect him in case of injury, because such protection is considered necessary for the efficient operation of that instrumentality, the Federal Government must have the power to legislate so as *to insure the continuance of the flow of the power* which will make the operation of that switch possible. After all, both switch and switchman are there only for the purpose of providing the flow of this power.

POINT III.

The jurisdiction of the National Labor Relations Board does not *depend* upon the proportion of interstate to intrastate activity of the companies involved. Nor is it in any way affected by the New York State legislation on the subject.

A. The Jurisdiction of the National Labor Relations Board Does Not Depend upon the Proportion of Interstate to Intrastate Activities.

It is clear that in so far as the jurisdiction of the National Labor Relations Board is derived from the *relation* of the activities of the Consolidated Edison System as a whole to the commerce of the nation, and the effect which a cessation of those activities would have upon that commerce, there is no distinction between those portions of its business which supply the motive-power to the instrumentalities of interstate and foreign commerce on the one hand and the remainder of its activities on the other. The argument in that respect as contained under Subdivision A of the preceding Point applies to both alike,—both being subsumed under and covered by the principles laid down by this Court in the *Jones & Laughlin Case.* But even in the aspect of the case which was discussed under Subdivision B of the preceding Point, namely, if we consider only those activities of the Consolidated Edison System which make it an *Agency of Interstate Commerce,* the propriety of the exercise of Federal power would not depend upon the proportion which those activities bear to the remainder of the activities of the companies involved. In this respect there is a distinction between producers or distributors of *commodities* which are the subjects of commerce on the one hand, and *agencies* and *instrumentalities* of commerce on the other. In the case of commodities the proportion of *inter*state to *intra*state commerce is important, even though not of decisive

importance. Even in the case of commodities, the *portion going into interstate commerce* may be so great as to seriously affect that commerce, in which event the *proportion* will be disregarded. For it is clear, that it is only that portion which goes into interstate commerce that exercises an effect upon it. In certain cases, however, the proportion may become important. That even then the business need not be *predominantly* interstate has been settled by this Court in the recent case of

Santa Cruz Fruit Packing Co. v. *National Labor Relations Board*, 58 S. Ct. 656.

And it is equally clear that even in such a case the jurisdiction of the National Labor Relations Board could not possibly depend upon the proportion of the interstate portion of the business to the entire business. For, if that were so, a concern whose interstate business is large enough to be a matter of national concern would be withdrawn from Federal power by the mere increase of the intrastate portion of its business, even though its interstate business continued to be as large, or even grew larger in size, thus seriously affecting interstate commerce.

These considerations need not detain us, however, for they are clearly beside the point in cases which come within the domain of Federal power and Federal jurisdiction because of their *direct* effect upon interstate commerce. In such a case neither the size or magnitude of the activity itself, nor its *proportion* to any other activity of the business concern involved, is of any importance or relevancy. This is clear from an examination of the cases in this Court involving the power of the Interstate Commerce Commission to prescribe intrastate rates. In only one instance was the question of the proportion of interstate to intrastate business even considered, and that for a special reason which will be discussed further below. In none of the other cases was the proportion between interstate and intrastate busi-

ness considered of any relevancy. The exception referred to was the order of the I. C. C. involved in the case of

Railroad Commission v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563,

in which this Court sustained the order of the Interstate Commerce Commission increasing all intrastate rates for the purpose of providing the carrier with a certain revenue under the provisions of the Transportation Act of February 28, 1920. Because of the specific nature of the order in question,—i. e., because the order was made not for the purpose of *regulation*, but for the purpose of raising revenue for the carrier,—it was necessary to show that the intrastate business was large enough to be important from a revenue point of view. But whenever the question was one of regulation of an interstate instrumentality or agency whose interstate and intrastate activities were commingled, the question of proportion was never even considered. The case of

N. Y. C. & H. R. Co. v. *Hudson County*, 227 U. S. 248,

is particularly significant in this connection. In that case the record disclosed that the amount of "railroad business", upon which the decision turned, was less than one-third of the entire business of the ferry involved,—the remainder being "local traffic" which was clearly not comprehended within the provisions of the statute there involved. Nevertheless, not even the counsel for Hudson County, which attempted to regulate the "local" traffic, considered that circumstance of sufficient importance to advert to it in argument. Needless to say, this Court did not mention it in its opinion overruling the contention. The reason is obvious: *The power of the General Government to regulate interstate commerce, including all its instrumentalities and agencies, cannot be defeated by commingling interstate activities with intrastate activities, or dissolving the one in the other, no matter how strong or how weak the resulting solution from an interstate commerce point of view.*

B. The Jurisdiction of the National Labor Relations Board Is Not in Any Way Affected by the New York State Legislation on the Subject.

The jurisdiction of the National Labor Relations Board was unaffected by any legislation of the State of New York for two reasons: *First, because there was no such legislation.* And, second, because it *couldnot be defeated by such legislation.*

(a) There Was No New York State Legislation Applicable to the Case at Bar.

As appears from the statement of facts, and the findings of the Board upon which it is based, the controversy herein between this respondent and the employers arose prior to May 5, 1937, the day upon which the respondent filed its Charge with the Board. The Complaint of the Board was filed on May 12, 1937. The hearings were concluded on June 24, 1937, except for certain special testimony which the petitioners were allowed to introduce on July 6, because the witness was abroad when the testimony was concluded on June 24. At the time the Charge and Complaint were filed there was no legislation on the part of the State of New York covering the kind of controversy involved herein. Subsequent to the filing of the Complaint, on May 20, 1937, the Legislature of the State of New York enacted a Labor Relations Act, substantially similar to the National Labor Relations Act. The State act went into effect on July 1, 1937.

The above bare statement of dates should suffice to show that there is no state legislation affecting the controversy involved in this suit. Clearly, a law passed on May 20, 1937, which did not take effect until July 1, 1937, could not possibly be applied to unfair labor practices which occurred prior to May 5, 1937, or at any time prior to July 1, 1937. And it is rather odd that counsel who are so alert in invoking constitutional provisions, as to invoke the "Impairment of Obligation of Contracts" clause of the Constitution, which clearly does not apply, should have overlooked the prohibition against *ex post facto legislation*, which might have ap-

plied if the New York Legislature had attempted to include within its purview unfair labor practices which occurred before the effective date of the Act. Had the New York Legislature attempted to do so, there is no doubt but that the astute counsel for the petitioners would have argued,—and with much more reason than any of the arguments contained in their present briefs,—that back pay in case of reinstatement for alleged unfair labor practice was in the nature of a penalty which comes under the ban of *ex post facto* provision of the Constitution, and therefore invalid. In fact, if we may judge by the present briefs, they would probably have argued that that made the entire order of the Board invalid, and the Act itself unconstitutional. However, we need not speculate on what *might have* happened, since the New York legislation clearly was not intended to, and does not, apply to anything that occurred prior to July 1, 1937.*

(b) No State Legislation Could Deprive the Federal Government of Its Power in the Premises.

It is elementary that where national power exists, the national government cannot be deprived of that power by state legislation. No citation of authority is necessary. But if it were necessary it will be found in the cases already cited and in the excerpts from opinions of this Court already quoted. Nor does the fact of commingling of national matters with local matters, or the proportions of each in the resultant *ensemble* make the slightest difference, as already pointed out in an earlier portion of this brief. That would be the case even if the state had actually desired to retain

* As a matter of fact the constitutionality of the New York State Labor Relations Act is under attack in the New York courts for unconstitutionality on other grounds. By an odd coincidence, present counsel were served with a brief, while writing this portion of the brief, in which the Hon. Samuel Seabury, one of New York's most distinguished lawyers, makes a vigorous attack upon the constitutionality of the New York State Labor Relations Act. The argument is not material here, nor is the question whether or not that argument is likely to be sustained by the New York courts. But the fact of the argument, and the possibility of its being sustained, illustrates the utter absurdity of the contention of counsel for the petitioners herein that the passage of that Act has some bearing upon the question of the power of the Federal government here under consideration.

jurisdiction over its own "local affairs," so-called. As a matter of fact, however, that is not the case here, as will be seen further below.

C. The New York State Legislation Was Designed to Aid and Not to Hamper the Operations of the National Labor Relations Act, and the State Expressly Waived Its Rights in the Premises.

Traditionally, in all questions of disputed power between the Federal government and the State Governments, it was assumed that the State or States felt aggrieved by the assertion of Federal power. In a good many cases the assumption was utterly unjustified. But occasionally that was actually the case. One noted example is that of the case in this Court cited above of the increase of intrastate railroad rates under the Transportation Act of February 28, 1920. In the case of *New York* v. *United States*, 257 U. S. 591, the State of New York actually sued to enjoin the enforcement of the order of the Interstate Commerce Commission in question, claiming not only a lack of power on the part of the Federal Agency generally, but an invasion of its *contractual rights* with the New York Central Railroad. And the State of New York was joined in opposition to that assertion of power by the Federal Agency of every state in the union. Fortunately, we have no such situation here. The legislation here in question was passed by the State of New York in pursuance to a policy adopted by it in 1933, and joined in since by many other states, of aiding and assisting the National government in carrying out a policy of social legislation deemed beneficial to the country as a whole, and to intrastate commerce as well as interstate commerce. Because of the limitations upon the power of the Federal government, some real and some fancied, the State of New York, in common with other states, have recently pursued the policy of passing state legislation modeled upon Federal legislation, intended to apply to those fields of social and economic activity which the Federal government might not be able to reach. And, apparently, bearing in mind just the kind of argument that is made by counsel for the petitioners herein, it took the precaution, in this in-

stance, of *disclaiming* in advance its jurisdiction on the score of "local interest," and, in effect, *repudiating* any claim which may be made on its behalf based upon an alleged infringement of its sovereignty. In order to forestall, in so far as lay in its power, the kind of argument that is presented here, the Legislature of the State of New York inserted the following section as part of the Act in question:

> *"The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act."* (N. Y. Consolidated Laws, Ch. 31, Art. 20, Sec. 715.)

It is not claimed here that this provision enlarges the power of the National Government or the jurisdiction of the National Labor Relations Board. That question is not involved here. But we do claim that the argument made by counsel for the petitioners on the score of the hospitals, schools, and other state and municipal institutions that may be involved, *as if that* made the State of New York anxious to retain jurisdiction over this controversy, is clearly unauthorized and beside the point. If anything, the State of New York, in pursuance of its public policy, as declared by this legislation, is anxious to withdraw from the field in every instance where that will permit the agencies of the Federal government to assume and exercise jurisdiction for the protection of the national interests, which must, of necessity, result to the benefit of the State as well as of the Nation.

Without entering upon the vexed problem whether or not jurisdiction can be conferred by consent, two things must be borne in mind in our connection: One is, that the existence of a power in the Federal government may depend upon the policy of a state as expressed in its legislation. And the other is, that the propriety of the exercise of an existing power may depend upon the action or attitude of

the State affected. While a state cannot have a public policy contrary to that of the nation,

Mondou v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S. 1.

and no legislation on the part of a state can defeat a power granted by the Constitution to the Federal Government, a state may, as already pointed out, pass legislation in aid of a power existing in the Federal Government, and the Federal Government may pass legislation in aid of a state policy, as expressed in its legislation, covering or affecting matters not otherwise within the Federal jurisdiction.

United States v. *Hill*, 248 U. S. 420.

This is well illustrated in one of the cases cited and quoted from on the brief of counsel for the petitioners-employers, the case of—

Pennsylvania v. *Williams*, 294 U. S. 176.

Counsel for the petitioners seem to think that this case is an authority in favor of their position. It happens to be exactly the reverse. On the question of power that case holds that even in the case of a Building and Loan Association, which this Court has held in another case, also quoted on petitioners' brief, is a quasi public corporation,—i. e., a quasi-state agency,—

Hopkins Savings Assn. v. *Cleary*, 296 U. S. 315,

state legislation cannot possibly interfere with the power lodged by the Constitution in the Federal Government.

And, in addition, the *Williams* case illustrates the point contended for by us,—contrary to the whole tenor of the argument for petitioners,—that the question of power is not a rigid one; and that there is a difference between power exercised *in aid* of the other government concerned and power exercised *in conflict* therewith. This is particularly true of the exercise of power by the Federal Government, because of the *superiority* of its power. Because of that superiority of the federal power, the state must give way

in every case of concurrent jurisdiction. But that in itself should act as a restraint upon the exercise of power by the *Federal Agencies,* in the sense that any discretion lodged in them should not be exercised so as to arouse conflict with state authority whenever that can be avoided, and that due regard should be given in all such cases to the substantial interest of the state and its declared public policy. But, clearly, all of the considerations which actuated this Court in reversing the decision of the lower Federal Courts in the *Williams* case *are considerations in favor of sustaining the decision of the Circuit Court of Appeals in the case at bar. Not only has the State of New York not attempted to take jurisdiction in this case, but it declared its public policy to be in favor of the taking of jurisdiction by the Federal Agency wherever possible.*

PART TWO: THE EVIL AND THE REMEDY.

POINT IV.

The interference by petitioner-employers with the right of their employees to self-organization is conclusively and incontrovertibly established.

If the jurisdiction of the National Labor Relations Board is clear, the violation by the petitioner-employers of the rights of their employees is even clearer. We have in mind particularly the basic right of self-organization, as to which the facts are so clear and uncontroverted that they hardly leave any room for argument. A summary review of these facts, without going into any detail, will therefore suffice here, as in the pertinent facts of jurisdiction. But in order to fully appreciate the import of the facts to be reviewed, we may quote briefly the pertinent provisions of the National Labor Relations Act. Section 7 of the Act provides that—

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively *through representatives of their own choosing,* and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

And Section 8 of the Act provides, among other things, that it shall be an "unfair labor practice" for an employer—

> "(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> "(2) To *dominate* or interfere with the formation or administration of any labor organization or *contribute financial aid* or other support to it * * *
>
> "(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to *encourage* or *discourage* membership in any labor organization."

The purpose of the statute to leave employees absolutely free in the choice of their representatives who are to bargain collectively for them is clear and unequivocal, and the language in which any interference with that right is prohibited is as comprehensive as it could well be. This language was chosen with a view to making it impossible for any employer to *influence* the choice by his employees of the representatives who are to bargain with him, either positively or negatively,—*positively* by in any way assisting in or encouraging the choice of any particular agency which the employer may favor, or *negatively* by doing anything which would tend to prevent or discourage the selection of any agency which may have incurred the employer's disfavor.

We may also refer here to a few general principles which we believe to be applicable to the interpretation of the National Labor Relations Act. The first is, that the statute, being remedial in its nature, must be construed *liberally*,—that is to say, liberally in favor of the employees for whose protection it was enacted. The second is, that in construing any part of the statute the entire statute must be considered, and each provision must be interpreted in the light of the aim and purpose of the Act as a whole. The third is, that, like similar statutes,—such, for instance, as the statute of frauds or the anti-trust laws,—its provisions must not be interpreted in accordance with any set of rules or formulae devised or formulated in advance, which would ossify or harden it, thereby depriving it of that fluidity or flexibility which is necessary if the statute is to effect its purpose, and furnish the protection which it was intended to give to the simple and the weak, against the overbearing of the strong and the wiles of the crafty. The terms "interfere", "restrain", and "coerce", must therefore be given broad meaning, and the words "encourage" and "discourage" must not be limited by the words which immediately precede them. We respectfully submit, that under the provisions of this statute an employer has no right to do anything in the nature of the exercise of the *power* which he possesses over his employees by reason of the employer-employee relation, so as to encourage or discourage membership in any particular

labor organization. And we further respectfully submit, that under certain conditions *the mere expression of favor or disfavor by an employer amounts to interference or even coercion.*

Not that the answer to the question as to whether or not there was any violation by the petitioners-employers of the rights of their employees is at all dependent upon a determination of such subtleties. Indeed, the violation by the Consolidated companies of the rights of their employees guaranteed by the statute could not have been either more frank or more brutal. But in view of the vast and almost unlimited possibilities for evasion, we consider it important to call attention to the canons properly applicable to an interpretation of this statute; and we also desire to stress the fact that the violations of the statute which do not seem upon first glance to fall within its literal provisions are as important as the open and flagrant violations of its specific provisions. We have particularly in mind the "recognition" extended by the companies to the I.B.E.W. The statute says nothing about "recognition." Nevertheless, we respectfully submit, that the "recognition" involved herein, under the circumstances of this case, is as complete a violation,—nay, as open a defiance of the provisions of the statute,—as could well be imagined. The clear violations of the letter of the law which followed that "recognition" were already embraced in it; and their actual occurrence was merely an extension in time and space of the coercive power contained in the act of "recognition." This case, in fact, presents a conspiracy to violate the rights of the employees by foisting upon them representatives not of their own choosing. The gravamen of the offence is the conspiratory agreement known in the case as the "recognition"; and the open and flagrant violations of the provisions of the statute which followed it are the overt acts which carried the conspiracy into effect.

"*Corecion*" is the exercise of one man's will upon that of another through the compelling influence of the power which the coercer possesses over the one coerced; and "*interference*" is the prevention of the exercise of one's will by another through the power which the other possesses to direct

that will. Like the question of the *effect* of a certain economic situation, or group of facts, upon interstate commerce, or its *interference* with interstate commerce, the questions of coercion of or interferen with employees under the National Labor Relations Act cannot be dealt with in an intellectual vacuum. They operate in a real world, and can only be understood in connection with that real world, which alone gives them meaning.

What was the real world in which and out of which this case arose?

The first fact to be considered is the existence of the Consolidated Edison System,—its size, its power.

The next fact to be considered is that during its entire history it has managed to keep all labor-unions from its preserves. *All attempts at labor union organization somehow petered out, and their organizers somehow found themselves outside of its breastworks.* The only labor union with which it came in contact, Local 3 of the I.B.E.W., recognized the inviolability of the System's rights not to have any labor-union among its employees, *and was under contract not to organize them.* Its absolute domination of its employees was free from any "interference" by labor-unions. Even the enactment of the National Industrial Recovery Act made no appreciable dent in its anti-union policy. As a matter of precaution it deemed it advisable to organize "unions" of its own, the so-called Employee Representation Plans, since conceded to have been company unions, although the term "company union" was never used by the companies until they were ready nominally to abolish them (R. 188-189).

The third fact to consider is the manner of the organization of these company unions. This illustrates perfectly the *norm* according to which the Consolidated Edison System permits its employees to "organize," and this *norm* acquires particular significance when we consider the manner in which the present so-called "labor organizations" among its employees, the "labor union"-petitioners, came into existence. A comparison of what happened at the time the Employee Representation Plans came into existence with what hap-

pened when the so-called I.B.E.W. "locals" were formed reveals the following significant points;

In the first place, the cause of the appearance of both "organizations" was an external one,—a law guaranteeing to workers the right of organization, *making a movement among the employees for real self-organization likely.* In the case of the organization of the Employee Representation Plans, it was the enactment of the National Industrial Recovery Act. In the case of the I.B.E.W. "locals," it was the National Labor Relations Act. Not the enactment of the law, but the decisions of this Court validating it. The significance of the *occasion* of the emergence of these organizations becomes striking when we consider the *manner* in which they came into existence.

The second, and most important point in this connection, is, therefore, *the will which created the organizations: In each instance the will was that of the master.*

When the National Industrial Recovery Act was enacted, the petitioners-employers were not satisfied to leave the problem of organization to their employees, but forestalled any possibility of self-organization by creating an organization into which any attempt of their employees to organize would be canalized. We need not consider at this point whether the canalization was to be by means of "gentle guidance" or coercion. Suffice it to say, that the moving force behind the organization process was the force of the *master's will or the master's pleasure.* Exactly the same thing happened when this Court declared the National Labor Relations Act constitutional: *Consolidated Edison System would not leave the matter of "self-organization" to its employees, but sought to forestall any real self-organization by providing the organization into which alone their employees were to be organized.* When the System decided to "disband" the Employee Representation Plans,—if we are to accept seriously its assertion to that effect,—it did not limit itself to making the bare announcement of such a decision. On the contrary, before the announcement of the abandonment of the Employee Representation Plans was made, the System had taken care to provide another organization into which its employees were to

be "guided" or *driven*. Before Mr. Carlisle addressed the "representatives" of his employees on April 20th, he had taken care to negotiate with Mr. Tracy for the new organization, and when he met these "representatives" he announced to them the "recognition" of the new organization in the same breath in which he announced the "abandonment" of the old. No *interregnum* was permitted. In effect, if not in actual words, what Mr. Carlisle announced to the "representatives" of his employees on April 20, 1937, was a paraphrase of the old formula of absolutism: *"The Company Union is dead. Long live the Company Union!"*

The third point to be considered is the character of the "representation" offered by the organizations provided by the Consolidated Edison System for its employees. It is only natural that the master's will that created the organizations should name the "representatives" who were to guide them. According to Straub's uncontradicted testimony as to the manner in which the Employee Representation Plans were organized, the company picked the men who were to do the organizing, and these men were then told that they "had been sent by the employees to start a means of collective bargaining." No such thing had in fact occurred,—Straub's fellow-employees had never delegated him either to negotiate with Management or to start any organization among them. A formula of words was adopted by the Master in order to comply with what he thought were the requirements of the law as it then stood. Exactly the same procedure was followed in the organization of the I.B.E.W. "locals." Except that in this case the manner was more brutal and more brazen,—owing to the "necessity" of the case. "Necessity knows no law." Nor has it, apparently, any decent regard for public opinion. When Mr. Carlisle met the "representatives" of his employees on April 20, 1937, to announce to them the "recognition" of the I.B.E.W., *the personnel of the "representatives" who were to represent the employees in the re-labeled company unions had already been settled between Mr. Carlisle and Mr. Tracy,—settled by an agreement to continue the same set of "representatives" that had been functioning is what is now admitted to have been a company union.*

The Record shows that it was part of the arrangement *entered into before the chartering of the so-called "locals" of the I.B.E.W.*, that the officers of the company unions were to continue to function as the "representatives" of the employees after the "re-organization" of the "Plans" into "Locals" (Board's Ex. 15, Record, p. 1406).

There is only one particular in which the manner of the creation of the presently functioning "labor organizations" among the Consolidated Edison employees differs from that in which their predecessors, the avowed company unions, were created: The Employee Representation Plans were apparently organized in a leisurely manner; while a rather unusual, not to say extraordinary, haste was exhibited in the creation of the "Locals". The reason for this haste was two-fold: Section 7-A of the National Industrial Recovery Act was at best a slow-moving thing, and the employers could afford to take their time. But more important than that was the fact that there was no actual movement for self-organization among the Consolidated employees at that time; *whereas in April, 1937, this Intervenor, an affiliate of the energetic C.I.O., was actually in the field organizing the System's employees.* Haste,—unseemly haste,—was therefore imperative; and the System was fully up to the occasion. For years there had been no organization of any kind among its employees,—all organization being frowned upon by the Master. When the first groping steps were taken by law to protect the rights of workers to self-organization, the System proceeded at a leisurely pace to defeat the provisions of that law by providing a lifeless, spineless, and functionless, organization. The situation was different in April, 1937. The National Labor Relations Act is a law with teeth in it,—even though the teeth may not be as effective in some respects as might be desired. And the C.I.O. was in the field, doing a remarkable organization job. Not only haste but extraordinary pressure was therefore required,—and the System has accomplished the remarkable feat of organizing a great majority of its employees in the space of two months.

This in itself is sufficient evidence of the fact that the work or "organization" was done not by the inert,—not to say lifeless,—I.B.E.W., but by the Consolidated Edison System.

But we need not speculate on the subject. The Record is replete with evidence of the "organizational" work of the System,—both as to the facilities furnished to the I.B.E.W. and the *coercision* of its employees. The testimony with respect to the latter, naturally, came only from the employees themselves, who felt themselves coerced. But the testimony as to the facilities furnished by the companies to the I.B.E.W. came not only from the witnesses called on behalf of the complaining union, but also from Mr. Floyd L. Carlisle himself. For, notwithstanding the formal denials entered by him as to *knowledge* of these facilities, he was forced to admit what could not be denied,—namely, that the "disestablishment" of the ERP, which in reality was the transformation of these Plans into the so-called "Locals" of the I.B.E.W., lasted for quite a while, after formal "recognition" had been granted to the I.B.E.W. But quite apart from the question of facilities and financial help furnished in the form of I.B.E.W. "organizers" who were carried on the payrolls of the companies, the "recognition" itself was the greatest *organizer* that could possibly have been employed on behalf of the I.B.E.W. In this connection, certain portions of Mr. Carlisle's testimony become extremely significant, particularly when taken in connection with the previous history of the companies and their relations to the I.B.E.W.

We have already referred to the fact that the Consolidated Edison Company had an agreement with the I.B.E.W. as far back as 1924, whereby the latter *agreed not to organize* the Consolidated Edison employees. Mr. Carlisle also testified that, after the NRA came into existence, the I.B.E.W., through Mr. Bonguiazet, its secretary, had made repeated attempts to enter into contractual relations with the Consolidated Edison System but met with no success (R. 1216). It also appears in the Record that when an independent organization known as the International Brotherhood of Utility Employees was formed after the National Industrial

Recovery Act became a law, and thereupon affiliated with the I.B.E.W., it met with such determined opposition from the companies, and received so little encouragement from the I.B.E.W., that it withdrew from the latter organization (R. 415-416). With these facts in mind, let us now turn to Mr. Carlisle's own testimony as to the causes of the rapid "organization" of petitioners' employees by the I.B.E.W. and the motive power behind it,—bearing in mind the additional facts of Mr. Carlisle's personality and his interest in denying that the companies in any way brought about this "organization."

We start with the fact, conceded by Mr. Carlisle, that there was no organization of the I.B.E.W. among the employees of the Consolidated Edison System on April 20, 1937, when "recognition" was extended, *the recognition which Mr. Carlisle himself considered equivalent to the making of a "collective bargaining agreement."* Mr. Carlisle testified that he did not know at the time what, if any, membership the I.B.E.W. had among the Consolidated employees, and from other portions of the Record it is clear that it had none. The letter of "recognition," which is dated April 20, 1937, and is in evidence as the Board's Exhibit 13-A, was sent, according to Mr. Carlisle, after two conferences which he had had with Mr. Daniel W. Tracy, the president of the I.B.E.W. Both of these conferences took place *after* April 12, 1937, and *before* April 19, 1937. According to Mr. Carlisle's testimony, the general terms of the "contract" to be entered into between the Consolidated and the I.B.E.W. were agreed upon at the first conference, and all of the details were agreed upon at the second conference,—with the single exception of that of an increase in wages (R. 1221). The latter question was left open, according to Mr. Carlisle, for consideration by *committees which were to be brought into existence. And it was only after the interview between Messrs. Carlisle and Tracy at which the general terms of the "contract" had been arrived at, that the I.B.E.W. put any organizers into the field* (R. 1222). But more important even than the question of the *time when* the I.B.E.W. started its organization work, is the *cause* of that activity on the

part of the I.B.E.W., as understood by Mr. Carlisle himself. On this point he testified:

> "We having entered into a collective bargaining agreement, presumably organization work, would proceed" (R. 1223).

That the organizational drive could not have succeeded,—*nay, would not have been undertaken,*—without this previous agreement with the employers is amply proven by the Record. The Record also shows that when this organizational "drive" on behalf of the I.B.E.W.,—really the dragooning of the employees into the I.B.E.W.,—was going on, no other labor organization could even get from Mr. Carlisle the courtesy of an answer to a letter, *even though that organization admittedly represented some of the companies' employees*" (R. 1241).

POINT V.

Collective Bargaining a La Carlisle.

Under the preceding Point we have discussed the System's notion of "employee representation" and "self-organization" by employees. We may now turn to examine its notion of "collective bargaining", and how it squares with the right of the same name guaranteed by the National Labor Relations Act. It goes without saying, of course, that if there was no real *self-organization* on the part of the employees, there could not have been any real collective bargaining. Clearly, bargaining by an employer with "employee representatives" chosen by himself, or whose selection was influenced by him and was not really the free act of the employees, is not collective bargaining within the meaning of the law.

> *Texas & N. O. R. Co.* v. *Brotherhood Ry. & S. S. Clerks,* 281 U. S. 547.

But the vice of the alleged collective bargaining involved in this case goes much deeper than that. Apparently Mr.

Carlisle was not satisfied with picking the "representatives" of his employees with whom he was to "bargain." In order to make assurance doubly sure, he limited the scope of the "bargaining" to such an extent that it amounted to no bargaining at all. The Record shows, and the Board has found as a fact, that, while the ERPs were formally in existence, *they were not permitted to have any say with respect to wages,*—the only thing that the ERPs could possibly have bargained about, since there was no question of striking or similar matters. With the change of the law, and, therefore, of the *form* of organization, it became necessary to give the alleged "labor organization" some bargaining function,—at least *formally,* so as to bring them "within the law," as it was hoped astute counsel might induce the courts to interpret it. This matter of "within the law" is very characteristic of Mr. Carlisle's entire conduct. Although he pretended to be desirous of acting in accordance with the "spirit" of the law, his own testimony shows that his real desire was to bring himself "within the law" in the sense of not being caught while transgressing it. This was, of course, a rather difficult task under the National Labor Relations Act and the decisions of this Court upholding it. But Mr. Carlisle was equal to the occasion,—at least, so he thought. The device attempted this time to circumvent the law was a simple one: Having decided upon the reorganization of the company unions by placing upon them the label "I.B.E.W. Local" instead of the label "Employee Representation Plan," he proceeded to limit their functions in a manner that would leave them practically functionless,—so that the new organizations would not only be the same in personnel as to "representation", but also in their functionlessness. The plan called for the substitution of "Locals" for the "Plans", with the same managing personnel. But the new "Locals" were to have no more say in the actual "collective bargaining" than the Plans had. Mr. Carlisle did not wait until the "Locals" were organized before he did his "collective bargaining". The times were dangerous, and Mr. Carlisle was taking no chances. The C.I.O. was in the offing, and there was no telling but some Straub or other might upset the apple-cart, if the actual collective bargaining were left even

to the so-called I.B.E.W. "locals" when actually formed. *And so Mr. Carlisle did his collective bargaining in advance of the organization of the I.B.E.W. "Locals," even though these "Locals" were supposed to be "the party of the other part" to the bargain. The "collective bargaining" agreement, which was to be entered into by the "Locals" when organized, was actually made before the ERPS, which they were to supplant, had been dissolved.*

The first intimation that the ERPs had that they were to dissolve was on April 20, 1937. At that time, concededly, there was no "local" of the I.B.E.W. among the Consolidated employees. But the "contracts," which are in evidence as Respondents' Exhibits 17-22, purporting to be agreements between the respective companies of the System and certain locals of the I.B.E.W., *were actually made prior to April 19, 1937, before those "Locals" had been organized.* According to Mr. Carlisle, everything had been agreed upon at the two conferences which he had had with Mr. Tracy before April 19, 1937, except the detail as to the raise in wages. We need not go into the question whether or not that detail had actually been agreed upon; and if not agreed upon, whether it was not one of those things which Mr. Carlisle had deliberately left open in order to bring himself "within the law." Suffice it to say, that according to Mr. Carlisle's own testimony, the question of wages was not of particular importance at this juncture, in view of the purposes sought to be accomplished,—namely, *the shutting out of the C.I.O.* As to what Mr. Carlisle really considered important in the contract to be entered into was stated by him as follows, in giving an account of his first interview with Mr. Tracy:

> "Mr. Tracy had requested it, he stated that with the Wagner Labor decision he hoped that the company now would give consideration to a contract with a National organization. I spent several hours discussing the type and nature of an agreement. I stated that the operations of the Public Utility, Electric and Gas and Steam in a city like New York, that any agreement would have to be on the basis of *no strikes, no sit-downs, no interruption of operations, and machinery for complete arbitration and settlement of grievances.*" (R. 1220)

Mr. Tracy, having accepted the basic terms of the agreement at this first conference, there was very little left to agree upon except certain details, and these were agreed upon at the next conference, without the assistance of either "Plans" or "Locals". Mr. Carlisle's testimony on this point is as follows:

> "Q. Now, that then was the first conference, and when was the next conference before the 19th or 20th of April? A. I don't recollect whether it was one or two days before, it was very close to it.
>
> "Q. *One or two days before the 19th or 20th?* A. *Yes.*
>
> "Q. And was that too with Mr. Tracy alone? A. Well, I am not sure whether Mr. Low might have been present.
>
> "Q. Who is Mr. Low? A. Mr. Low is the executive vice-president of the Brooklyn Edison Company.
>
> Q. And what was the purpose of that conference with Mr. Tracy? A. That was to further go into the details of clauses that would be inserted in a contract.
>
> "Q. And at either one of those conferences was there any discussion of membership? A. Of what?
>
> "Q. Of the I.B.E.W. in your system? A. No.
>
> "Q. Have you agreed at either one of those conferences that a contract would be executed? A. No, the understanding was that we would enter into collective bargaining with them on the basis other than wages that we had discussed. *The question of wages would be taken up with committees of men. That presumed that those committees would come into existence.*" (R. 1221-1222)

We need not imagine, however, that the question of wages was actually taken up by committees selected by the employees. Oh, no! A reading of the Record leaves no doubt of the fact that no one but the few picked men,—picked by Mr. Carlisle from among the chief officers of the ERPs,—had anything to do with the "contracts" as finally signed and attested,—and that even these men had nothing to do but to sign on the dotted line.

So much for the "collective bargaining". And now as to the persons who were to be bound by it. The "contracts" in

question pretend to be limited in scope to employees who are members of the I.B.E.W. But Mr. Carlisle specifically stated that his interpretation of these agreements is that they cover all of Consolidated's employees,—irrespective of what organization they belong to. Except that employees who do not belong to the I.B.E.W. have the right to bring grievances as *individuals*. And Mr. Carlisle specifically testified that the part of the agreement which made the I.B.E.W. the exclusive collective bargaining agency for all employees, *went into effect on April 20, 1937, notwithstanding the fact that at that time the I.B.E.W. represented none of the employees.*

According to Mr. Carlisle, that made no difference. Such was the peculiar interpretation of the right of collective bargaining *which counsel for petitioners now ask this Court to sustain.* In answer to a question as to the basis upon which recognition was granted, Mr. Carlisle said:

> "Oh, no. When we wrote the letter to Mr. Tracy that we would engage in collective bargaining, there was no stipulation that they had to have any number of members." (R. 1236)

And in answer to an inquiry on the subject of his knowledge as to the extent of the membership of the I.B.E.W. among his employees at the time of the signing of the formal contracts, Mr. Carlisle said:

> "I don't recollect that we had received any formal statement, but Mr. Tracy had stated that there were so many members in this company and that company and the other company, *and I assumed that that was none of our business.*" (R. 1237)

And a little later he testified that the number of employees represented by the I.B.E.W. "was not a controlling reason in the entering into the collective bargaining arrangements" (R. 1238). But he was emphatic on the subject that the "recognition" by the companies of the I.B.E.W. on April 20, 1937, settled the question of "collective bargaining" for *all* of their employees, and that the "contracts" signed actually covered all of the employees as far as group or "collective"

bargaining was concerned. On the first point his testimony was as follows:

"Q. Was it then that you discussed this matter and held upon the question of the execution of the contract until such time as Mr. Tracy did more organizational work, in your system? A. Oh, no, no, *the letter of April 20th was the action of the company to recognize the International Brotherhood as the collective bargaining agency.*" (R. 1222).

And on the second point he testified:

"*My understanding is very definite and clear so far as the collective bargaining agreement is concerned. It is executed with the I.B.E.W.* Now, grievances that arise with members of the I.B.E.W. are presented under the terms of this contract. If there is an employee who is not a member of the I.B.E.W. and he has some grievance that he wishes to discuss with the management we will discuss it with him *but it is related to his individual affairs* and not in connection with any other organization that he may be a member of.

"Q. So that the company in the contract permits the employees to take grievances up with management? A. *As individuals.*

"Q. As individuals? A. Yes.

"Q. May they take grievances up with management as members of a different labor organizations? A. *No.*" (R. 1234),

And again:

"Q. Yes. Well, you do say, however, that employees cannot be represented by other labor organizations in the submission of grievances. Now, do you also say that other employees cannot be represented, if they so desire, by a different labor organization? A. Why, we have nothing in this contract that prohibits a man from joining any labor organization or not, as he wants. However, as I understand collective bargaining, as I understand the law of the state under which we are operating, *this is our collective bargaining contract, and no other.*

"Q. I see. A. But an individual can't present any grievance that he pleases.

"Q. Yes. And that, despite the fact that the contract only speaks for employees who belong to a labor organization and not for a majority of the employees? A. We have entered into what I regard as a *completely, all-embracing, collective bargaining arrangement, and this is the only one that we concentrate* (sic)." (R. 1235).

POINT VI.

The discriminatory discharges and employment of labor spies were clearly established.

It would be tedious, if not quite impossible, to rehearse here in detail the testimony on the question of discriminatory discharges. The testimony on these points occupies several hundred pages of the Record, and the summary given in the Findings of the Board occupies about twenty pages of the *Decision*. This summary, which will be found at pages 106-125 of the Record,—is full as well as convincing. It would be profitless to attempt another summary, and those who may not be convinced by the summary given by the Board would, of necessity have to read the entire Record. One thing is clear, however, and that is that the Findings of the Board are *supported by the evidence*, within the meaning of Section 10(e) of the National Labor Relations Act, which provides that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive."

In this connection we must remember that the facts are not really in dispute, and that the most that can be claimed by counsel for the employers is that what appear to be damning facts on the surface were ordinary acts actuated by motives of economy, and that the damage done to the attempts of their employees to self-organization by those discharges was the result of the long arm of coincidence. It is extremely doubtful whether any tribunal could possibly be made to believe, for instance, that the simultaneous discharge of Wersing, Wagner and Greulich, which removed at one fell blow all of the officers of Local 103 of the Independent

Brotherhood, was the result of mere coincidence. However, this is not the question before this Court. The question is, whether the National Labor Relations Board was bound to accept that explanation, which to it seemed utterly unbelievable.

The same is true, of course, with respect to the charge of employment of labor spies, made by the present Intervenor and sustained by the Board: The question is not whether the Board could have accepted the employers' "explanation", but whether it was bound to do so. And, of course, the Board was not bound to do so either in reason or under the law. In this connection, as well as in the case of the discharges, the attention of the Court is respectfully called to the fact that the employers, and the witnesses called to testify in support of their contention on these points, did not hesitate to make statements which were clearly false, as is shown by the following findings of the Board with respect to the employment of labor spies,—which, incidentally, conclusively prove the utter lack of *bona fides* in the contentions with respect to the discharges.

> "The complaint alleges that the respondents had employed and were employing industrial spies or undercover operatives for the purpose of disclosing to them the activities of their employees in and on behalf of labor organizations. The respondents admitted the employment of detectives, but denied that it was for the purpose of investigating the union activities of their employees. The respondents asserted that in any event the employment of detectives did not extend beyond November 1936 and that consequently the controversy on this issue has become moot.
>
> "Uncontroverted evidence discloses that the respondents engaged the detective services of Railway Audit and Inspection Company, herein called the Inspection Company, from October 1933 through October 1936. The manager of the New York office of the Inspection Company testified that the services rendered to the respondents included investigation of the union activities of the respondents' employees. Frequently the respondents would send circulars, leaflets, and other literature to the Inspection Company for investigation

by its detectives. Among the various types of literature of this character were included the circulars and leaflets of the Independent Brotherhood, some of which contained the names of the leaders of that organization. Detectives of the Inspection Company also covered several of the meetings and conventions of the Independent Brotherhood throughout the year 1935. The Inspection Company made reports of its investigations and delivered them to the respondents.

"The manager of the Inspection Company and one of the detectives who did the investigating testified that detectives trailed Stephen L. Solosy, named in the complaint, and Philemon Ewing, both organizers for the Independent Brotherhood in Manhattan, in April 1935. The detective who trailed Solosy was given a picture of him and told to trail him, which he did for two days, after which time he was replaced by another detective whose report was delivered to the respondents. Solosy was unaware that he was being shadowed, but Ewing was exasperated by the ineptitude of the detective who trailed him and finally turned around and entreated him to perform his duties with more adroitness. Both Solosy and Ewing were discharged on January 17, 1936, and as we find below, one of the factors leading to Solosy's discharge was the report of his activities made by the Inspection Company. The respondents apparently still have in their possession the reports of the Investigation Company and so have the power to utilize them as a basis for future discriminatory action against their employees."

POINT VII.

This was not a jurisdictional dispute between labor unions, nor was the problem of representation as between bona fide labor unions in any way involved.

An attempt is made by counsel for the petitioners to present to this Court a supposed conflict between two labor unions, each claiming jurisdiction, or, rather, the right to represent the employees involved herein for the purpose of

collective bargaining. This issue is wholly fictitious, and does not arise on the record. In so far as this case at all involves two labor unions, the issue between them has been injected by the I.B.E.W. and its so-called "locals" by their intervention in the United States Circuit Court of Appeals after the true issues in this proceeding had been tried and disposed of by the Board. The record shows that the I.B.E.W. had notice of the proceedings, and that its counsel and representatives were actually present at some of the hearings. The failure of the I.B.E.W. or of any of its "locals" to come into the proceeding any earlier, as they could have, was no mere accident. It was part of a carefully calculated plan to obscure the issues in this case,—*one of the issues being the existence of the so-called "locals" of the I.B.E.W. as independent labor unions.* Their existence as such is denied by the respondents, and their wholly fictitious character as *bona fide* labor unions is established by the findings of the Board.

An attempt is made to destroy the decisive effect of this finding of the Board by a reference to the dismissal by the Board of the charge under Sec. 8(2) of the Act. But that dismissal neither destroys nor in any way detracts from the finding of the Board that the so-called "local unions" are mere continuations of the organizations formerly known as ERPs and designed to carry out the purposes for which the "Plans" had been created, namely, to frustrate self-organization among the employees involved. In this connection we again respectfully call the attention of the Court to the situation as it stood by the pleadings and issues made before the Board, the evidence before it, and the legal significance of those facts under the National Labor Relations Act. Section 8(2) of the Act makes it an "unfair labor practice"—

> "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

The only labor organization against whom the Charge made by the present respondent ran, and the only one mentioned in the Complaint of the Board, and the only one defi-

nitely mentioned throughout the evidence as doing anything, was the I.B.E.W. But we do not claim that the I.B.E.W. as such is not a bona fide labor union, or that it is dominated or controlled by the employers herein. Nor was there any evidence of any financial support given to the I.B.E.W., as distinguished from the so-called "locals" which are in reality neither unions nor a part of the I.B.E.W. as far as control is concerned. It is true that the evidence showed some kind of connection between the two organizations,—or, rather, that a Mr. Tracy, who happens to be the President of I. B.E.W., was one of the instruments used by the employers in the creation of the alleged "locals." But that was insufficient to make a finding against the I.B.E.W. *as such*. In this connection the attention of the Court is respectfully called to the fact that the dismissal of the Charge under Sec. 8(2) was *without prejudice*. Apparently, the Board considered that the *situation* may be such that will warrant a finding against I.B.E.W., but that the *evidence* had not fully disclosed that situation. In a spirit of conservatism it dismissed this Charge on the evidence presented, but without prejudice to its renewal in a different proceeding when proper evidence may be submitted of the exact relationship of the two organizations. But that does not in the slightest detract from the evidence or finding that the so-called "locals" themselves were the creatures of the employers.

This becomes even more apparent when we consider the actual decision of the Board as embodied in its order. That order is completely silent with respect to the so-called "local unions." The *writ* of the Board does not run against them. Their existence is completely ignored. We need not discuss the question as to whether the Board could not, on the basis of the evidence contained in the record, and summarized in the Findings, have ordered their disestablishment. Pursuing its *ultra*-conservative course, the Board saw fit not to make any order calling for the disestablishment of these organizations, because there was no evidence of any action on their part, nor any attempt on their part to claim any rights by intervening in the proceeding. The only tangible thing that was in the record when the case was finally closed, were the

alleged "contracts" between these vague and elusive entities and the very concrete and tangible employers, *who were the only ones before the Court offering these contracts in evidence and claiming rights thereunder.* No one else appeared to claim any rights under these alleged "contracts," and the Board felt no call to pass upon either the independent existence or the supposed rights of these nebulous beings. But it left no doubt as to what it thought of their parentage and the mode of their creation. Nor what it thought of their "contracts" or "contractual rights." They themselves were not before the Board. But the "contracts" supposed to have been entered into by them was put into evidence by the employers, *and the employers were claiming rights thereunder.* The Board passed upon the issue thus presented, finding that these contracts were not entered into in good faith, were a mere device and scheme to defeat the rights of the employees to self-organization, and ordered its disestablishment. The finding of fact is supported by the overwhelming evidence, both oral and documentary; and the order follows that finding as day follows night.

POINT VIII.

Neither the "due process" clause, nor the "impairment of obligations" clause, nor any private contractual rights are in any way involved.

The argument under the preceding Point was made *as if* a contract in the ordinary sense were involved. But we are not dealing with any such contract. In fact, the use of the word "contract" is wholly misleading, and puts in a false light the order under review. Before, however, examining the nature of this "contract" and the kind of "rights" which may arise thereunder, and *to whom* they may accrue, we must refer to a few subordinate matters made much of in one of the briefs for the petitioners.

A. The Alleged Impairment of Obligations of Contracts.

Among the clauses of the constitution appealed to, are the "impairment of obligations of contracts" clause and the "due process" clause. That the "impairment" clause does not apply is too evident to require extended argument. Indeed, the claim hardly merits any argument at all. It is elementary that that clause is not a limitation on the powers of the Federal Government. And it is equally elementary that it applies only to rights accrued under existing contracts, and does not prevent any legislation on the part of the governments limited thereby with respect to the mode of making future contracts or the kinds of contracts that may be made. Also, that it applies only to the acts of the legislature.

Sinking Fund Cases, 99 U. S. 700.
Canada Southern Ry. Co. v. *Gebhard*, 109 U. S. 527.
Ogden v. *Saunders*, 12 Wheat. 213.
Missouri & M. R. Co. v. *Rock*, 71 U. S. 177.
Knox v. *Exchange Bank*, 79 U. S. 379.
New Orleans W. Co. v. *Louisiana S. R. Co.*, 125 U. S. 18.

B. There Was No Violation of Due Process.

Nor is there much more to the argument of the "labor union" petitioners based on the due process clause, in so far as it relates to the procedure followed by the National Labor Relations Board. We do not intend to argue here the questions with respect to the general character of the procedure established by the National Labor Relations Board. We believe that the argument from the *Morgan* case is wholly inapplicable to the procedure followed in this case,—or that generally followed by the National Labor Relations Board,—but we prefer to leave it to the able counsel for the National Labor Relations Board to present the argument on that branch of the case. We shall therefore limit ourselves entirely to the argument presented by the "labor union" petitioners based on the alleged failure of the Board to give them proper notice, and the supposed disposal of their alleged rights *in absentia*.

Briefly stated, their argument is that they had not been properly "summoned" and that, therefore, the character of the "contracts" involved could not be passed upon by the Board. That this argument is without merit has been established by repeated adjudications of this Court under both the Fifth and the Fourteenth Amendments. These adjudications are to the effect that no particular form of notice is required, but that the form of notice depends on the nature of the case. It is clear that a proceeding under the National Labor Relations Act, like those before many other administrative governmental agencies of a semi-judicial character, is in the nature of a proceeding *in rem*. What is required is reasonable notice, either to the public at large or to particular groups specially interested, that such a proceeding would be had or hearing held, and an opportunity to be heard to those *desiring* to be heard. In this connection it must be remembered that the Board has no jurisdiction over any labor union. It cannot *summon* a labor union, nor *order* it to do anything. The only persons subject to its *summons* and *order* are employers. But the authors of the Act knew, of course, that other persons might have interests which might be *affected* by such orders. The Act therefore provides that any person interested may seek intervention voluntarily, and that any person whose interest might be adversely affected by any order of the Board might intervene in the Circuit Court of Appeals.

Clearly, a person who chooses to stay away from the hearings of the Board, cannot complain that he had not been heard by the Board. And a person who seeks to intervene only when the proceeding comes into the Circuit Court of Appeals, *and then does not ask for any further hearing*, cannot complain that his rights had been adjudicated without his presence or opportunity to be heard. Such a person has voluntarily, and as a matter of choice, invited someone else to make the record in his case, and he must abide thereby. This is precisely the situation of the labor union petitioners herein. They not only had knowledge of the proceedings but were actually present at some of the hearings. But they pre-

ferred not to *participate* in the proceedings. They left it to the employers,—*who, concededly, are joined in interest with them*,—to make the record in this case. They cannot now complain that they had not been heard. It would be odd, indeed, if in a proceeding like the present one, which is intended to be non-technical and expeditious, a person could deliberately stay away from the forum wherein the matter is tried, so that he could not be cross-examined on the origin, genuineness and merits of his alleged rights, and then intervene on appeal to raise the complaint that the judgment should be reversed because he had not been heard. The game played by the "labor union" petitioners is too transparent, and quite on a par with the alleged rights which they are seeking to assert.*

That the due process clause is not intended to perpetuate or sanctify a particular mode of procedure is too well settled to require any extended citation of authority or elaborate argument.

Hurtado v. *California*, 110 U. S. 516.
Maxwell v. *Dow*, 176 U. S. 580.
Hawaii v. *Mankichi*, 190 U. S. 197.

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* Counsel for the "labor union" petitioners state on their brief,—after making the point of the separate existence of the so-called "locals" from the I.B.E.W. as such,—that the separate existence and address of the "locals" were known to respondents but no attempt made to give them separate notice. That the "locals" had separate existence from the I.B.E.W. with respect to property and "property rights" is undoubted. But it does not at all follow that they could not be treated as one with respect to notice,—since notice does not depend on technical separate existence but on the likelihood that the information would be passed on. More important, however, is the circumstance that the record does not bear out the statement of fact. The reference in the brief is to the testimony of the witness Straub, who testified that on May 11th or 12th he was aware of the existence of *one* of the locals and that it had an office of its own. (It will be recalled that the Charge was filed May 5, and the Complaint May 12.) *But at that time Straub was an officer of that "local" and had no connection whatever with the union which filed the charges.* His knowledge was certainly not knowledge of the present respondent, nor, of course, of the National Labor Relations Board. And there is not a shred of evidence that either the Board or the present respondent knew of the existence of the "locals" as separate entities, or of any office maintained by any of them, before the close of the hearings; and all the evidence in the record tends to prove the contrary to have been the case.

C. The I.B.E.W., as Such, Has No Rights Under the Alleged "Contracts."

Before turning to the question of the nature of the "contracts" involved herein and the kind of "rights" which may accrue thereunder, we may dispose of the question *to whom* rights may accrue under such contracts, in so far as the I.B.E.W. is concerned. And that can be done very briefly. It is the well-settled law of the State of New York that these contracts, in so far as they may constitute "property" or may give rise to any "property rights," belong to the so-called "local unions." They are not the property of the I.B.E.W., and I.B.E.W, can have no property rights thereunder. This we believe to be the general law of the land. Since, however, these "contracts" were executed in the State of New York and intended to be performed in that State, we need not go into the question of the law which may prevail in other jurisdictions. The law of the State of New York on the subject is settled and is decisive.

Wicks v. *Monihan*, 130 N. Y. 232.
Wells v. *Monihan*, 129 N. Y. 161.
Kelso v. *Cavanagh*, 137 Misc. Rep. 653.
World Trading Corp. v. *Kolchin*, 166 Misc. Rep. 854.

D. The So-Called Contracts Are Not Private Contracts. Indeed, They Are Not Contracts at All.

The foregoing discussion assumed that we are dealing with actual contracts,—that is to say, contracts which are private agreements referring to some property rights, or rights in the nature of property rights. But such are not the "contracts" involved here. And for two reasons: First, because of the *general nature* of these "contracts." And, second, because of their *particular provisions*. We need not discuss here the problem, whether these instruments could be considered "contracts" in any aspect whatever,—for instance, in any controversy between the employers herein and the employees supposed to be covered thereby. These problems need not concern us here, for they do not arise in the case. What we are concerned with here is with the claim of "property"

or "contractual rights" in so far as it is advanced by the I.B.E.W. and its alleged "locals." As far as they are concerned, we respectfully submit, the instruments in question are not contracts at all.

(a) The Legal Character of the Alleged Contracts Prior to the Enactment of the National Labor Relations Act.

Before the enactment of the National Labor Relations Act, the nature of the instruments referred to as "contracts" in the record and in the arguments of counsel was somewhat doubtful,—the doubt arising, no so much from the general nature of the "contracts," but because of specific provisions occasionally contained therein. We respectfully submit, that as to the general nature of so-called "collective bargaining" agreements there could never be any doubt, and that all doubts that ever arose were due to specific provisions conferring particular rights on individuals or groups. The "collective bargaining" agreement in itself is clearly not a "contract" but a treaty between high contracting parties,—usually an employers association on the one hand and a labor union, or aggregation of labor unions on the other.

> "A labor union, as such, engaged in no business enterprise. It has not the power and does not undertake to supply employers with workmen. It does not, and cannot, bind its members to a service for a definite, or any, period of time, or even to accept the wages and regulations which it might have induced an employer to adopt in the conduct of his business. * * * It is just what it, on its face, purports to be, and nothing more. It is * * * not a contract. It comes squarely within the definition of usage. * * * 'an established method of dealing, adopted in a particular place, or by those engaged in a particular vocation or trade, which acquires legal force, because people make contracts with reference to it.'"
>
> *Hudson* v. *Cincinnati*, 152 Ky. 711.

It is clear that whatever rights may be acquired by individual employees against individual employers thereunder

by reason of the "usage" established thereby, there are no legal rights flowing therefrom to the "contracting parties," so-called, by reason of its execution, unless the document contains some provision of a special nature, constituting really a separate and distinct contract from the general "code" or "usage" established for the relation of employer and employee. We need not, however, pursue this problem any further, for the reason that the National Labor Relations Act has taken the entire matter out of the domain of *private* contract and placed it within the domain of *public law*. We shall therefore proceed to examine these "contracts" under the public policy announced and the public law established by the National Labor Relations Act.

E. The "Collective Bargaining" Agreement Under the National Labor Relations Act.

It is clear that whatever may have been the law before the enactment of the National Labor Relations Act, that Act has transferred the entire problem of employer-employee relationship into the domain of public law. That does not necessarily mean that an employer may not contract with a particular employee individually. But it does mean that in so far "collective bargaining," so-called, is concerned, parties are no longer free to contract in any way they please,—in fact, they are not free to contract at all except in accordance with its provisions. And one of the basic principles established is that collective bargaining on behalf of employees is not a private right, to be acquired by contract with an employer, but a public office to be conferred by the employees. No amount of bargaining between the Consolidated Edison Companies and the so-called "locals" could give the latter the right to make any contracts on behalf of the Edison employees.

The specific question here is whether such bargaining or the resultant "contracts" could give these "locals" any property rights. And, clearly, that question must be answered in the negative,—since collective bargaining can be done only by accredited representatives, and representation is neither

property nor a property right. A person may, indeed, have a "right" to public office, but that is neither tested nor governed by the legal rules applicable to property and contracts. They belong to a wholly different domain of the law. That domain of the law is now covered by the National Labor Relations Act. And it is clear that under the National Labor Relations Act no labor union can acquire the right of representation by contract, in the sense that such a contract may supersede, or take the matter out of, the supervision of the public authority charged with the enforcement of the Act, or give the "representatives" rights not granted to them by the Act. And in any event, such rights would not be private rights.

F. The Instruments Themselves Do Not Give to the Labor Union Petitioners Any Property or Rights in a Legal Sense.

We respectfully submit that no matter by what law the instruments referred to as "contracts" in this discussion are tested,—whether by the law now applicable to them under the National Labor Relations Act, or the law which prevailed before that Act, and no matter what view of that law we take,—there is nothing in these instruments which gives to the "labor union" petitioners either any property or any property right to which the ordinary law protecting property and property rights might attach. An examination of these instruments will show that each of them commences with the statement:

> "Witnesseth: That for the purpose of entering into such a basis agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Blank Company who are members of the Brotherhood and enable the Blank Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory the parties hereto agree with each other as follows:"

This introductory paragraph is followed by numerous provisions none of which confer any property rights upon the so-called "locals" except the right of bargaining collectively on behalf of Consolidated employees. Clearly, that would not have been a property right even before the enactment of the National Labor Relations Act. And since the enactment of the National Labor Relations Act the existence of these "contracts" makes no difference with respect to the right of representation. Either the "locals" are *bona fide* labor organizations, in which event they have the right of representation as to their members anyway, within the limitations of the Act. Or they have no such rights under the Act, in which event these "contracts" cannot confer that right upon them.

Clearly, the arguments from "contract,"—and the argument from "due process" because of the so-called "contracts,"—are wholly irrelevant to the case.

POINT IX.

The order of the National Labor Relations Board was proper in every respect, and the decision of the Circuit Court of Appeals upholding the same was correct.

The National Labor Relations Board found three kinds of unfair labor practices indulged in by the employers herein: (1) labor espionage; (2) discharges of employees because of union activities; and (3) discouragement and prevention of self-organization on the part of their employees by coercing them into joining pretended labor unions, which would result in the control of their relations by others than representatives of their own choosing, really the nominees of their employers. The unfair labor practices with respect to the discharge of certain employees, presented a simple problem.—this evil being subject to correction by direct order of reinstatement and back pay. The other two evils could be corrected only through "cease and desist" orders. Espionage being in its nature secret, there was nothing tangible to which

the Board could attach its order; and the Board was, therefore, compelled to limit itself to a general admonition by way of an order to the employer "not to do it again."

On the other hand, the interference with the employees' right to self-organization had assumed the concrete form of alleged "contracts," claimed to have been entered into between the employers and so-called "labor unions." These, as already stated, the Board found not to be *bona fide* contracts entered into in good faith, but mere devices of the employers to defeat self-organization of their employees. Clearly, the Board would have been doing less than its duty if it contented itself with merely issuing a general order directing the employers "not to do it again" but leaving untouched the instrument whereby the employers intended to defeat the right of the employees to self-organization. That such was the intention of the employers is not disputed. Indeed, the *entire* complaint of the "labor union" petitioners, and the *principal* complaint of the employer-petitioners, is, that instead of the right of the employees to self-organization being made free and unimpeded, these employees should have been hamstrung by the "contractual rights" of these "labor unions." That instead of the employees being left free to bargain collectively through representatives of their own choosing, these "representatives" should be imposed upon them by virtue of these "contracts."

In this connection the attention of the Court is respectfully called to the fact that the Board found, that, notwithstanding the *formal* provisions of these "contracts" that the "local unions," so-called, bargain collectively only on behalf of their own members, Mr. Floyd G. Carlisle "interpreted" the "contracts" to mean that these "local unions" were to be the *sole* "collective bargaining" agencies for all of the employees of the Consolidated Edison System. Indeed, that was his announced intention long before the "contracts" were in existence, and the "contracts" were entered into for the sole purpose of carrying that intention into actuality. Clearly, under the circumstances, not to remove these impediments would have been tantamount to defeating the entire purpose of the Act and a betrayal by the Board of its duty thereunder.

CONCLUSION.

**The order of the National Labor Relations Board was
minently proper, and the decision of the Circuit Court
Appeals in sustaining that order eminently correct.
hey should be affirmed.**

Dated, New York, October 3rd, 1938.

Respectfully submitted,

LOUIS B. BOUDIN,
Of Counsel for United Electrical and
Radio Workers of America, C. I. O.,
Respondent.

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No. 19

In the Supreme Court of the United States

OCTOBER TERM, 1938

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ITS AFFILIATED COMPANIES, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 19

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 65–130) are reported in 4 N. L. R. B. 71. The opinion of the Circuit Court of Appeals (R. 1737–1747) is reported in 95 F. (2d) 390.

JURISDICTION

The decree of the court below (R. 1748) was entered on March 21, 1938. The petition for a writ of certiorari was filed on April 2, 1938, and

was granted on May 16, 1938. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10, paragraphs (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Act, as applied to these petitioners, is a valid exercise by Congress of its power to regulate commerce among the States.

2. Whether petitioners were denied due process of law by reason of the fact:

(a) That they were ordered to cease and desist from giving effect to certain contracts, admitted in evidence, which were found to have been executed in continuation and culmination of the unlawful coercion of employees charged in the complaint, where petitioners themselves introduced evidence concerning the contracts and raised the issue of their effect by claiming that their execution was a complete defense to the charges of coercion;

(b) That no intermediate report was made by the Trial Examiner and no oral argument was had before the Board;

(c) That the Board declined to permit testimony concerning the discharge of Stephen Solosy by certain of petitioners' witnesses, who were available and could have been produced at the close of the Board's case, at an adjourned hearing, subsequently held for the purpose of taking the testi-

mony of certain other petitioners' witnesses theretofore unavailable, where petitioners were afforded the opportunity to call all available witnesses prior to the adjourned hearing, and did not thereafter pursue their statutory right to apply to the court below for leave to adduce such additional testimony.

3. Whether certain of the findings of the Board are supported by evidence.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. III, Title 29, Sec. 151, *et seq.*) are set forth in the Appendix, pp. 71–76, *infra*.

STATEMENT

Pursuant to charges duly filed by the United Electrical and Radio Workers of America, a labor organization (hereinafter referred to as United) (R. 4–6), the National Labor Relations Board, by its Regional Director at New York City, issued its complaint against petitioners on May 12, 1937 (R. 7–16). In addition to jurisdictional allegations, the complaint, as thereafter amended (R. 40–41, 164–165, 405–409, 525–526), alleged that petitioners had employed and were employing industrial spies for the purpose of ascertaining the union activities of their employees; that petitioners had discharged and had refused to reinstate six named employees because of their union activities; that petitioners

had contributed and were contributing financial and other support to the International Brotherhood of Electrical Workers, a labor organization (hereinafter referred to as the Brotherhood), and had coerced and were coercing their employees to join or assist the said organization; and that by all of the foregoing acts, petitioners had engaged and were engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7) of the Act.

Copies of the complaint and of a notice of hearing thereon (R. 16–17) were duly served upon petitioners, and United and the Brotherhood were given notice thereof (R. 17–18).[1] On May 17, 1937, petitioners, appearing specially, filed a motion to dismiss the complaint on jurisdictional grounds (R. 19–33).[2] Pursuant to an amended notice of hearing served upon petitioners, with notice to United and the Brotherhood[3] (R. 34–36), a hearing was held on June 3, 10, 11, 14–17, 23, 24, and

[1] The sufficiency of the notice of the Brotherhood is challenged by its brief in this Court (No. 25). See brief for the Board in No. 25, pp. 3–4, 6–7. The petitioners herein, in their Memorandum in Support of Motion for a Stay, filed in the court below, have acknowledged (p. 5) that "The I B E W was given notice of the pendency of the proceedings."

[2] This motion, later renewed, was denied (R. 1200).

[3] The Brotherhood also challenges the sufficiency of the service on it of the amended notice of hearing. See footnote 1, *supra*.

July 6, 1937, at New York City, before a Trial Examiner duly designated by the Board (R. 37). On June 16, 1937, during the hearing (R. 803–804), petitioners filed an answer to the complaint as amended to June 14, 1937, which reserved their jurisdictional objections, denied the alleged unfair labor practices, alleged the execution of certain contracts executed by petitioners with certain locals of the Brotherhood, and set forth certain affirmative defenses (R. 42–63). At the close of the Board's case the Trial Examiner granted petitioners' motion to amend their answer to include the contracts as a separate defense to the charge of coercion (R. 1200–1201).

Petitioners' counsel then requested an adjournment until July 6, 1937, to enable him to prepare petitioners' case, and in particular to secure the testimony of Floyd L. Carlisle and Harold Dean, both of whom were said to be unavailable and whose testimony was asserted to be indispensable (R. 1185–1192). The reasons offered for not calling other witnesses at the close of the Board's case was that petitioners' counsel required time to examine the record and see what testimony to present in rebuttal, and that the Board had completed presentation of its case sooner than had been anticipated by petitioners' counsel (R. 1188–1189). Counsel for the Board had announced on June 23 that the Board's case would probably be completed on the following day (R. 1102). The Trial Examiner, on June 24, 1937, offered to recess the hear-

ing until June 25 for the purpose of receiving the testimony of any of petitioners' witnesses who were available (R. 1311). This offer was apparently not acceptable to petitioners. The Examiner then granted the adjournment to July 6 for the purpose of receiving the testimony of Carlisle, who was said to be abroad, and reserved decision until the hearing was resumed on July 6 whether the testimony of Dean, who was said to be in Milwaukee, and of other witnesses, would be received (R. 1192).

Petitioners, having asked for and received from the Trial Examiner permission to do so, presented this matter directly to the Board by letter dated June 28, 1937 (R. 1545–1547). By reply letter, dated July 2, 1937, the Board stated that it would permit both Carlisle and Dean to testify on July 6, but would not permit any other witness then to testify on the ground that such available witnesses should have been produced upon completion of the Board's case (R. 1548). After the testimony of Carlisle and Dean had been received on July 6, the Trial Examiner, in accordance with the Board's directions, refused to permit a witness called by petitioners to testify concerning the discharge of Stephen L. Solosy (R. 1309–1313). Petitioners then made an offer of proof concerning the discharge of Solosy and Philemon Ewing (R. 1314–1315). As to Ewing no discriminatory discharge had been alleged, nor did the Board make any order

respecting his discharge. No offer of proof as to any other matter was tendered by petitioners. On July 15, 1937, petitioners submitted a brief (R. 71, 1316).

By order of the Board dated September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 37 of the Board's Rules and Regulations, Series I, as amended (R. 64). No oral argument was had, none having been requested by petitioners.[4] On November 10, 1937, the Board issued its decision affirming the rulings of the Trial Examiner and setting forth its findings of fact, conclusions of law, and order (R. 65–130). The facts as disclosed by the Board's findings may be summarized as follows:[5]

1. *The nature of petitioners' business.*—Petitioners, operating as a system under a unified ownership and management, are engaged in the business of supplying electricity, gas, and steam to consumers in New York City and Westchester County, New York. In 1936 the system supplied 97.5 percent of the total electric energy sold in New York City (R. 72–76).

The major portion of the raw materials, supplies, and equipment used in the production of all the electric energy, gas, and steam sold by petitioners moves to their plants from States other than

[4] Petitioners allege (Br. pp. 8, 32) that a request was made. The facts bearing on this are fully discussed at pp. 48, 55–58, *infra*.

[5] The facts with relation to petitioners' enterprise are more fully detailed at pp. 20–22, *infra*.

New York. All of the approximately 5,000,000 tons of coal utilized in 1936 was shipped from mines in other States to petitioners' plants, where it was unloaded and handled by petitioners' own equipment and employees. All of the approximately 115,000,000 gallons of oil consumed in that year was likewise transported in interstate commerce from wells and refineries in other States to petitioners' plants. Substantial quantities and proportions of cable, copper, and other materials and supplies are purchased from sources located outside the State (R. 77–78).

The record furnishes many particular illustrations of the dependence on petitioners' services of various enterprises engaged in interstate and foreign commerce. Thus, petitioners supply the electric energy used by most interstate railroads for the operation of interstate trains and interstate passenger and freight terminals. Steam is supplied to operate compressors for the switches in the interstate railroad tunnel of the Pennsylvania Railroad under the North River. Petitioners also supply electricity to the Port of New York Authority for the operation of its terminal, the Holland Tunnel, and its other projects (R. 78–80). In the fields of interstate and foreign communication, petitioners supply telegraph, telephone, and radio systems (R. 81–82). In navigation, petitioners supply electric energy used in the operation of

piers, slips, wharves and terminals of steamship companies and interstate ferries (R. 80–81). Into a miscellaneous but important group of customers fall, *inter alia:* the post-offices and the United States Barge Office and Custom Houses; the Floyd Bennett Air Field; the Dow-Jones & Co., Inc., Ticker Service; the New York Stock Exchange; and the New York Times. All are dependent upon petitioners for their interstate operations and activities (R. 80–82).

2. *The unfair labor practices.*[1]—In 1933, as a means of purported compliance with the collective bargaining provisions of the National Industrial Recovery Act, petitioners conceived and initiated, and thereafter entirely supported, certain Employees' Representation Plans (R. 85–90). As late as April 1937, when United instituted a campaign for membership among petitioners' employees, petitioners countered with their own campaign to force the employees to pledge adherence to the Plans (R. 90).

When the decisions of this Court sustaining the present Act were rendered on April 12, 1937, petitioners abruptly altered their labor tactics. After two conferences between D. W. Tracy, the International President of the Brotherhood, and Carlisle, who was in charge of petitioners' labor policy, Tracy wrote Carlisle on April 16, 1937, demanding recognition of the Brotherhood and proposing a

[1] The facts with relation to the unfair labor practices are more fully detailed at pp. 33–37, 59–68, *infra*.

contract by which the Brotherhood would be recognized as the representative of its members. Without seeking to ascertain the desires or views of their employees upon the subject, and without making any inquiry as to the number of their employees belonging to the Brotherhood, Carlisle announced at a meeting of the Plan on April 20, 1937, called by him for that purpose, that petitioners had decided to recognize the Brotherhood. Despite protests and requests by the employees for a delay of recognition until it could be discussed, petitioners immediately recognized the Brotherhood along the lines of the proposed contract. At the meeting on April 20, Carlisle agreed that he had hitherto considered unions as unnecessary evils, but now considered them as necessary evils, and as between the Brotherhood and United he preferred the Brotherhood (R. 91–93).

According to plan, seven Brotherhood locals were quickly set up throughout petitioners' system in the place of the old Plans, and petitioners set in motion a vigorous campaign to intimidate, influence and coerce the employees into joining the Brotherhood (R. 93–99). Then, as the last act in completion of the scheme of controlling the selection by their employees of representatives for collective bargaining purposes, petitioners, between May 28 and June 16—after the Board's complaint had been issued—entered into seven substantially similar contracts with the seven Brotherhood locals (R. 99–102). Although these contracts recognized the Brotherhood as the representative of

its members and were applicable in terms only to such members, petitioners construed them as exclusive collective bargaining agreements and freely admitted that they would not bargain collectively with any other labor organization during the existence of these contracts (R. 100–102).

In addition, the Board found that petitioners had employed industrial spies for the purpose of uncovering the union activities of their employees (R. 103–105), and had discharged six employees because of their union activity (R. 106–125).

All of these aforementioned acts, the Board found, tended to lead to labor disputes burdening and obstructing commerce and the free flow thereof (R. 125). The Board concluded that petitioners had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act. The complaint with respect to Section 8, subdivision (2) of the Act was dismissed (R. 126–127, 130).

The order of the Board (R. 127–130) entered on the basis of these findings, in addition to requiring petitioners to reinstate to their former positions with back pay the six employees discharged, directed petitioners to cease and desist (1) from discouraging membership in United or any other labor organization of their employees by any manner or means of discrimination, or encouraging membership in the Brotherhood or any other labor organization of their employees by any manner or

means of persuasion, intimidation or coercion; (2) from permitting any representatives of the Brotherhood or any other labor organization to engage in union activities during working hours unless like privileges were granted all other labor organizations of their employees; (3) from permitting petitioners' employees who were officials of its Employees' Representation Plans to use petitioners' time, property and money on behalf of the Brotherhood or any other labor organization; (4) from employing detectives or other means of espionage to investigate their employees' union activities; and (5) from giving effect to their contracts with the Brotherhood or recognizing the Brotherhood as the exclusive representative of their employees.

On November 18 and 22, 1937, petitioners and the Brotherhood,[1] respectively, filed in the court below their separate petitions to review and set aside the Board's order under Section 10 (f) of the Act (R. 1473–1553; 1554–1691). The Board answered each petition, praying for enforcement of its order in full (R. 1691–1711; 1711–1725). Petitioners and the Brotherhood each replied to the Board's answers (R. 1726–1733; 1734). On petition filed, United was permitted to intervene (R. 1735, 1737). On March 14, 1938, the court below

[1] The Brotherhood was not a party to the Board proceedings. Its participation in the proceeding before the court below was as a "person aggrieved" under Section 10 (f) of the Act (R. 1554).

rendered an opinion upholding the Board's order in every respect (R. 1737–1747). A decree of enforcement was entered on March 21, 1938 (R. 1748). On May 16, 1938, this Court granted writs of certiorari (R. 1748).

SUMMARY OF ARGUMENT

I

The test of permissible application of the National Labor Relations Act to an industrial enterprise is whether "stoppage of * * * operations by industrial strife" in that enterprise would result in substantial interruption to or interference with the free flow of interstate commerce. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41. Here the facts indicate clearly that the test is met. Petitioners' operations are such that their cessation by reason of industrial strife would block interstate transportation to and from New York City on several main interstate railroads; other facilities of transportation in the area, such as automobiles, trucks and buses, as well as ferries and other transportation by water, would be seriously hampered; communications by telegraph, telephone and radio would be seriously affected; and many other enterprises, with large and important interstate operations, would be forced to shut down. Plainly, the effect upon interstate commerce of an interruption of petitioners' service by a labor dispute would be, as the court below said, "catastrophic" (R. 1741).

In addition, stoppage of petitioners' operations would interrupt a substantial flow of materials and supplies into the State. Petitioners are themselves engaged in interstate commerce by reason of their purchase in other States of large quantities of coal and oil.

Petitioners' chief argument that the Act may not be constitutionally applied to them is based upon the lack of a finding that there exists a necessity for Congressional regulation in the present case. The argument is directly contrary to the findings and intention of Congress under the present Act and to the decisions of this Court. *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453.

The present case is not distinguishable from the *Santa Cruz* case on the ground that here the Act is sought to be applied to protect an interstate flow of raw materials although there is no subsequent flow of the finished products or other materials into other States. If Congress has the power to remove a burden to a substantial flow of commerce from a State, it would completely ignore reality if it did not also have the power to remove the burdens to the same flow which arise by reason of acts consummated in the State of destination. On many previous occasions the Court has sustained such a power. *E. g., Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *Local 167, Brotherhood of Teamsters* v. *United States*, 291 U. S. 293.

II

A

1. Paragraphs 1 (f) and (g) of the order of the Board, which require petitioners to cease and desist from giving effect to their contracts with the Brotherhood and from recognizing it as the exclusive bargaining representative of its employees, are in all respects valid and proper under the Fifth Amendment. The record is clear that the contracts were part and parcel of petitioners' illegal purpose to select a representative for its employees, place that organization in an openly favored position in the plants, and perpetuate their interference with their employees' freedom of choice by maintaining it in that position. The contracts, therefore, were clearly illegal under the Act, and fall by reason of such illegality. *United States* v. *Reading Co.*, 226 U. S. 324, 357. Moreover, under these circumstances, and in order to establish conditions under which the employees might exercise an unfettered choice as to their collective bargaining representatives, it was clearly proper and within the power of the Board to order petitioners to cease and desist from giving effect to the contracts and from according exclusive recognition to the Brotherhood. The same type of relief has frequently been afforded by the Board and has been approved by this Court. *National*

Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.

2. Petitioners' contention that they were not reasonably apprised that the validity of the contracts was in issue in the proceedings can not be sustained by the record. The complaint, filed before any of the contracts were signed, informed petitioners that the legality of their relations with the Brotherhood was challenged. The answers filed by petitioners alleged the contracts as a complete defense. The course of the hearings was directed in large part to the question of the validity of the contracts. Indeed, the brief filed by petitioners with the Trial Examiner devoted considerable space to the question of their validity.

Under these circumstances petitioners not only had, but exercised, an opportunity to present their case with full knowledge that the validity of the contracts was a subject of inquiry. No other prejudice being alleged, due process was not denied by the absence of an intermediate report. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 350–351. The same facts serve to answer petitioners' contention that the absence of oral argument deprived them of an opportunity to discover that the validity of the contracts was in issue. Moreover, the record is clear that petitioners did not ask for either an oral argument or an intermediate report, and had no

reason to expect that either would be granted in the absence of a request.

3. Even assuming that petitioners were not in fact adequately informed prior to the entry of the Board's order that the validity of the contracts was in issue, nevertheless they are not prejudiced. They might have applied to the Board for a rehearing, or they might have applied to the court below pursuant to subsections (e) and (f) of Section 10 of the Act for leave to adduce additional evidence on the contract issue. They did neither.

4. In any event, the remainder of the order is unaffected. Petitioners do not contend that the asserted failure to apprise them that the validity of the contracts was in issue in any way prejudiced them on any other branch of the case.

B

Petitioners have no valid ground of complaint based upon the refusal of the Board to hear the proffered testimony of two witnesses on July 6, 1937. With adequate notice that the Board's case was to be concluded, petitioners' counsel sought a postponement of the presentation of his case to the later date. The ruling of the Board that evidence of witnesses available when the Board's case was completed would not be received at a later date was reasonably within the Board's discretion. In

any event petitioners, having failed to ask the court below for leave to adduce additional evidence, are in no position to claim prejudice by reason of the ruling.

Since the petitioners' offer of proof on July 6th went solely to the single issue of whether the discharge of one man was discriminatory, it is plain that the validity of other portions of the order are not affected.

C

Nor is the order as a whole rendered invalid by reason of the absence of an oral argument before the Board. The record shows clearly that petitioners did not request an oral argument, and had no reason to expect one in the absence of a request. Moreover, the Fifth Amendment is fully complied with since petitioners had previously filed a lengthy brief. *Morgan* v. *United States,* 298 U. S. 468, 481.

III

Petitioners' contention that the evidence does not support the findings is without merit. The evidence is fully set out at pages 33–37, 59–69, *infra,* and need not be summarized here. Nor does the record support petitioners' contention that the findings were based on hearsay evidence. There was direct testimony on each issue. In any event, hearsay evidence was clearly proper. *Spiller* v. *Atchison, Topeka & Santa Fe Ry.,* 253 U. S. 117.

ARGUMENT

I

THE NATIONAL LABOR RELATIONS ACT, AS HERE APPLIED TO PETITIONERS, IS A VALID EXERCISE OF THE POWER OF CONGRESS OVER INTERSTATE COMMERCE

In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41, the Court laid down the test of permissible application of the National Labor Relations Act to an industrial enterprise: Would "stoppage of * * * operations by industrial strife" in that enterprise result in substantial interruption to or interference with the free flow of interstate commerce? To the extent necessary to answer that question the test is determined by the facts with respect to the particular enterprise. The existence of the nexus between unfair labor practices condemned by the Act and industrial strife may not be challenged; it is concluded for all cases by the finding of Congress in Section 1 of the Act—a finding which was approved by the Court in the *Jones & Laughlin* case. See 301 U. S. at 42, 43. Nor is it material whether there has been industrial strife interrupting the business of the particular employer. *Ibid.*[8] We

[8] It is wholly irrelevant to the real issues involved under the commerce clause to argue, as do petitioners (Br. p. 61), that "the 'ifs' in the causal sequence [between the unfair labor practices and the interruption to interstate commerce] are manifest."

turn, then, to the effect on interstate commerce of industrial strife in petitioners' operations.

The facts bearing on this question were the subject of a detailed and comprehensive stipulation (R. 1318–1388), and are not in dispute. Upon these facts, we submit, it is clear that cessation or restriction of petitioners' operations by industrial strife would have a much more far-reaching and instantaneous effect upon interstate commerce than that upon which jurisdiction was grounded in the *Jones & Laughlin* case.

Petitioners constitute a unitary system engaged in the production, distribution, and sale of electricity, gas, and steam in the City of New York and adjacent Westchester County (R. 1321–1323, 1343–1354). New York City is, in fact, almost entirely dependent upon petitioners for electricity; in 1936 they supplied 97.5 per cent of all such energy sold by central station utilities in the city (R. 1350).[*] A general cessation of petitioners' operations would have an instantaneous effect upon the general economic life of the city. Its effect

[*] During 1936 petitioners also supplied practically all of the electricity sold in Westchester County, all of the gas sold in that county, and 55.3 per cent of the gas sold in New York City (R. 1349–1350). They also operate the only central-station steam utility in the city (R. 1350).

The magnitude of petitioners' enterprise is indicated by its revenues—$232,373,198.92 in 1936 from the sale of its three principal products—and by its pay roll—$81,891,990.40 for the same year, distributed among approximately 42,000 employees (R. 1347, 1349, 1351, 1340, 1342).

upon interstate and foreign commerce, in particular, is set out in detail in the record.

Cessation of petitioners' operations, without more, would instantaneously block all interstate transportation to and from the nation's leading commercial center on three interstate railroads—the New York Central, the New York, New Haven & Hartford, and the Hudson & Manhattan—and plunge their freight and passenger terminals into darkness (R. 1383–1386).[18] Interstate transportation by automobile, truck, and bus would be substantially crippled, inasmuch as the Holland Tunnel, various bridges, and the freight terminal of the Port of New York Authority all rely upon electricity supplied by petitioners for their continued operation (R. 1383–1386). Interstate ferries would be hampered by lack of electric power to operate slips and terminals, and foreign and coastwise trade would be additionally obstructed by lack of electricity not only for piers and wharves, but also for lighthouses, beacons, and other aids to navigation in New York harbor (R. 1383, 1387).

[18] Petitioners also supply electricity for the Manhattan terminal of the Lehigh Valley Railroad and steam for the operation of switches in the Pennsylvania Railroad's tunnel under the North River (R. 1386). Since the conclusion of the hearings, petitioners have announced the execution of a contract by the Pennsylvania Railroad to purchase from them electricity to operate trains to and from New York. The announcement states that with the new customer petitioners "* * * Will Supply the Traction Power for All the New York City Trunkline Railroads." *Around the System* (August, 1938), p. 1.

In the field of communications the havoc would be equally great. Most interstate and foreign communication by telegraph, telephone, and radio would immediately stop, since the Western Union Telegraph Company, the Postal Telegraph Company, the New York Telephone Company, RCA Communications, Inc., and the Columbia Broadcasting System depend upon petitioners for maintenance of their services (R. 1377–1380). Even the mails would be impeded by lack of electricity to operate the pneumatic tubes and to light and operate the various postal stations (R. 1376).

The record mentions specifically many other enterprises with large and important interstate operations or services which would be crippled or forced to suspend operations completely if electric power failed—the New York Stock Exchange, the Dow-Jones & Co., Inc., ticker service, the New York Times and the Floyd Bennett Airport (R. 1381–1382). Finally, with respect to the innumerable commercial and manufacturing enterprises in New York City engaged to a greater or lesser degree in interstate commerce, the Board concluded that cessation of electric power would be substantially equivalent, in its effect upon interstate commerce, to simultaneous labor disputes in all these businesses (R. 85. See also R. 1343–1349, 1357, 1373).[11]

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[11] The record shows to some extent the actual effect of a cessation of petitioners' service. On January 15, 1936, a short circuit at one of the generating plants interrupted the

Plainly, the court below did not exaggerate in stating that the result of an interruption of petitioners' service by a labor dispute would be "catastrophic" (R. 1741), nor did it err in stating that the effects on interstate commerce could not in any realistic view be deemed "indirect and remote" (*Ibid.*). No previous case in which this Court has sustained the exercise of Congressional power to protect commerce from the burdens of labor disputes reveals an effect even comparable to the complete collapse of economic activity which would result from labor disputes in petitioners' organization.[18] "A judgment that does not ignore actual

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alternating current service in parts of Manhattan and the Bronx. Service to some 40,000 consumers, involving about 10 percent of the load, was affected. The operations of several telephone exchanges, branch post offices, and various industrial and commercial concerns were wholly or partially impeded (R. 1357–58). A city-wide stoppage through a labor dispute, and the consequent inability of petitioners to maintain service in the area affected through the breakdown of a single plant by shifting the load to other stations, would, of course, have far greater effects upon commercial activities. In their brief filed with the Board, petitioners admitted (p. 106) that "In a delicate and intricate mechanism such as the [petitioners'] generating and distributing systems, one * * * employee * * * may cause a suspension of the service on which millions of people depend." See footnote 27, p. 46, *infra*.

[18] See, *e. g.*, *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58; *Santa Cruz Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453; *Coronado Coal Co.* v. *United Mine Workers of America*, 268 U. S. 295; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Association*, 274 U. S. 37; *Loewe* v. *Law-*

experience" (301 U. S. at 42) must, we submit, conclude that petitioners' operations have that "close and intimate" relation to commerce which warrants application of the Act.

In addition to the serious effects which a stoppage of petitioners' operations would have upon the interstate and foreign commerce of enterprises which depend on them for power and light, petitioners are also subject to the jurisdiction of the Board on an entirely independent basis, namely, the interstate commerce in which they are engaged. Petitioners constitute an industrial enterprise of considerable magnitude (see pp. 7–8, 20–22 *supra*) which is almost completely dependent upon interstate commerce for its raw materials, supplies, and equipment. During 1936, for example, practically all of the 5,000,000 tons of coal and 115,000,000 gallons of oil used by petitioners were brought to their plants from outside the State of New York (R. 1364–1368). Large quantities of cable, copper and other supplies were obtained in other states (R. 1369–1371). These huge movements in interstate commerce would be interrupted by strife between petitioners and their employees.

Petitioners do not deny that a cessation of their operations would affect commerce in either of the two respects discussed above. They deny, however, that the effects are legally sufficient to warrant

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lor, 208 U. S. 274; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *Local 167, Brotherhood of Teamsters* v. *United States*, 291 U. S. 293.

the application to them of the National Labor Relations Act. Their general contention, based upon certain language in *Florida* v. *United States*, 282 U. S. 194, is that the Act may be applied only where the predominant effect of a stoppage is on interstate commerce rather than on local activity. That condition, they contend, does not exist in the present case. More specifically, petitioners deny any legal significance to the use of their electric light and power by enterprises engaged in interstate commerce, and to the flow of their raw materials into the State of New York. Each of the contentions is without merit.

The contention that if, as petitioners allege, the effects of a stoppage of petitioners' operations are predominantly local, the State of New York, and not the Federal Government, should control the labor relations in their plants is in direct conflict with the decision of this Court in *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453. Admittedly, there, the employer was engaged chiefly in intrastate commerce. The Court, however, applied the well-settled rule that where federal regulation cannot be applied to protect interstate commerce without at the same time protecting intrastate transactions, the federal regulation may be applied to the whole. *Second Employers' Liability Cases*, 223 U. S. 1, 51; *Houston & Texas Ry.* v. *United States*, 234 U. S. 342, 351–352, 355; *The Minnesota-Rate Cases*, 230 U. S. 352, 399; *National Labor Relations Board* v. *Jones*

& Laughlin Steel Corp., 301 U. S. 1, 37–38. Indeed, any different conclusion would completely nullify the necessary supremacy of federal authority.

Petitioners' brief on this point would be much more appropriately addressed to an argument on the propriety of federal regulation than to one on constitutional power. On the question of policy, the existence of a labor relations act in the State of New York would be a factor to be considered; on the question of power, it is wholly irrelevant. The power of Congress to prevent serious interruptions to interstate commerce must be the same in all states.

Certainly the cases upon which petitioners rely do not prove the contrary. In *Florida* v. *United States*, 282 U. S. 194, the Interstate Commerce Commission had prescribed intrastate freight rates in Florida. The Court, in the sentence immediately preceding the language quoted by petitioners (Br. p. 57), states: "The question in the present cases, then, is not one of authority, but of its appropriate exercise." 282 U. S. at 211. The subsequent conclusion of the Court that the Interstate Commerce Act required more detailed findings as to the necessity for local regulations than the Commission had made in that case can have no possible bearing here. Congress itself, in the present Act, has made the findings which the Court thought necessary in the *Florida* case. As pointed out above (*supra*, p. 19) Congress has found that un-

fair labor practices are a prolific cause of labor disputes—a finding which is not contradicted, but supported, by argument that a state has also taken similar measures to insure industrial peace. Congress has not limited the application of the Act by any concept of preponderance of damage. Consequently, upon findings that the relation of an enterprise to interstate commerce is such that unfair labor practices in the enterprise will "affect commerce", the jurisdiction of the Board attaches, irrespective of the local results which may also be achieved, and of the local measures which may also have been taken.[13] *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board, supra.*

Petitioners attempt to avoid the application of the *Santa Cruz* decision by asserting that the employer there was at least partially engaged in interstate commerce,[14] whereas here petitioners' operations are wholly intrastate—that the commerce interrupted would be that of petitioners' custom-

[13] The other cases cited by petitioners are even less applicable. In *Pennsylvania* v. *Williams*, 294 U. S. 176, the issue was wholly one of the discretionary exercise of admitted power. In *Hopkins Savings Association* v. *Cleary*, 296 U. S. 315, a federal statute directly interfered with the reserved powers of the State to charter and control corporations. No question was raised under the commerce clause.

[14] Petitioners' assertion (Br., p. 67) that the interstate aspects of the enterprise were "dominant" in the *Santa Cruz* case is completely inconsistent with the fact. As a matter of percentages, only 37 percent of the product moved in interstate commerce, while 63 percent of it did not. See 303 U. S. at 467.

ers and not of petitioners. The claim is contradicted by the record, and, in any event is not a valid ground of distinction. Petitioners are, in fact, largely engaged in interstate commerce by reason of their purchase and receipt of huge quantities of supplies. *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Local 167, Brotherhood of Teamsters* v. *United States*, 291 U. S. 293.[15] But wholly apart from that fact, we believe the attempted distinction to be without merit. The commerce power is not concerned with the source of the burden, nor with the fact that, separately viewed, the burden is a local one. "It is the effect upon commerce, not the source of the injury, which is the criterion." *National Labor Relations Board* v. *Jones & Laughlin Steel Co., supra*, at 32. Application of the commerce power to intrastate transactions directly affecting interstate commerce, though carried on by persons not themselves engaged in interstate commerce, has frequently been upheld.

[15] Petitioners' contention to the contrary (Br., pp. 66–67) is based upon a line of cases holding that the sale of gas or oil *to consumers*, after it had been brought into the State, was not interstate commerce. We do not question that conclusion. See *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 470. Petitioner's interstate commerce consists of purchasing materials and supplies in interstate commerce (see *e. g.*, Br., pp. 12, 64). None of the cases cited by petitioners denies that such purchases constitute interstate commerce; indeed they each affirm it. See *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 245; *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298, 309; *Southern Natural Gas Corp.* v. *Alabama*, 301 U. S. 148, 154.

United States v. *Ferger*, 250 U. S. 199; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Stafford* v. *Wallace*, 258 U. S. 495; *Local 167* v. *United States*, 291 U. S. 293. Thus the fact that the commerce interrupted may be that of petitioners' customers is entirely immaterial. That interstate commerce will be obstructed by petitioners' unfair labor practices is not open to challenge. In consequence, the Congressional power may be exercised to prevent that obstruction. Injurious restraint to a substantial portion of all commerce centered about New York City cannot be placed beyond federal control on the plea that its source is the unfair labor practices of someone other than those whose commerce is restricted.[16]

Finally, petitioners deny legal significance to the flow of raw materials to their plants and storehouses from without the State of New York. The critical fact, they say, is that although the coal, oil, copper and other materials originate outside the

[16] An incident in petitioners' own experience provides an illustration of the point under discussion. In 1936 petitioners took over two generating stations theretofore operated by the New York Central Railroad to supply electricity for its trains (R. 1246). At the time that these stations were being operated by the railroad, it could not be denied that interruption of their service would directly and seriously affect interstate commerce. In no respect whatever has that relationship been altered by the change in ownership. The "work done" and "its relation to interstate commerce" remain the same. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 557.

State, they are used wholly within the State, and in no instance move on to other States.

The contention ignores, of course, the fact that petitioners are themselves extensively engaged in interstate commerce in procuring such materials. See p. 28, *supra*. Moreover, it is manifest that commerce of the magnitude of that in which petitioners are engaged cannot be deemed without national significance on any such basis. In the *Jones & Laughlin* case the Court rejected the contention that the Act could be applied only to employees engaged in an intermediate process in an interstate flow of goods (301 U. S. at 36):

> The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources.

The authority of the *Santa Cruz* case is equally clear. There the Court applied the Act to protect substantial exports of finished products, although there was no antecedent flow of materials to the plant from other states. Here the Act is sought to be applied to protect an interstate flow of raw materials, although there is no subsequent flow of finished products or other materials into other states. We fail to see any rational distinction between the two situations. In *Coronado Coal Co.* v.

United Mine Workers, 268 U. S. 295, the Court sustained the power of Congress to remove a burden to a substantial flow of coal from the State where it was mined. It would completely ignore the realities to contend that it may not now remove similar burdens to the same flow of commerce which arise by reason of acts committed in the State of destination. National concern in an unobstructed flow remains the same from whichever end the flow is viewed and wherever the acts which obstruct it occur. On many previous occasions the Court has sustained the power of Congress to remove burdens on commerce in the State where the interstate movement ends. *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Ass'n.*, 274 U. S. 37; *Local 167, Brotherhood of Teamsters* v. *United States*, 291 U. S. 293.

II

The Order of the Board is in all Respects Valid and Proper Under the Fifth Amendment

The contentions of petitioners with respect to the Fifth Amendment are made difficult of clear statement or answer by the indiscriminate mixture of apparently legal arguments, not elsewhere repeated, throughout the so-called "Summary Statement of the Proceedings" in their brief (see pp. 5-39). Their particular objections, however, appear to be directed at two portions of the order. Paragraphs 1 (f) and (g), which require petitioners to cease and desist from giving effect to their

contracts with the Brotherhood and from continuing to accord it exclusive recognition, are alleged to have been entered without adequate notice to petitioners that any question as to the contracts was in issue. The portion of Paragraph 2 of the order dealing with Stephen L. Solosy is alleged to have been entered without an adequate opportunity having been afforded petitioners to introduce rebuttal evidence. Finally, petitioners contend that the whole order should be set aside, not only because of these two alleged errors, but also because they were denied an intermediate report and an opportunity to be heard orally before the Board. Each of the contentions, we believe, is without merit.

A. PARAGRAPHS 1 (F) AND (G) OF THE BOARD'S ORDER ARE IN ALL RESPECTS VALID AND PROPER

1. THE BOARD WAS FULLY EMPOWERED TO REQUIRE PETITIONERS TO CEASE AND DESIST FROM GIVING EFFECT TO THE CONTRACTS WITH THE BROTHERHOOD [17]

Petitioners, by Paragraph 1 (f) of the order of the Board, are required to cease and desist from

[17] Petitioners' brief does not seriously question that this part of the order is within the powers of the Board and is supported by the findings and the evidence. The statement on page 80 denying that "at the hearing it was brought out that the contracts * * * were the culmination and the fruit of the coercion" seems to be directed only to the issue of adequate notice. The substantive validity of this part of the Board's order is directly challenged in the brief filed by the Brotherhood in No. 25 (pp. 43–49). The discussion of the issue is included in the present brief because of the other issues raised here with respect to Paragraphs 1 (f) and (g).

giving effect to their contracts with the Brotherhood and by Paragraph 1 (g) are ordered to cease and desist from recognizing the Brotherhood as the exclusive representative of its employees (R. 128). These portions of the order were based upon the conclusion by the Board (R. 102–103) that the contracts were simply a device to "consummate and perpetuate" petitioners' conduct in violation of the Act, and that petitioners must therefore be required to refrain from giving effect to them in order to establish conditions for the exercise of an unfettered choice of representatives by petitioners' employees (R. 103). Petitioners are not, of course, precluded from future relations with the Brotherhood, including the making of new contracts, after the effects of the unlawful acts of petitioners have been removed.

The record is clear, as the Board found, that the contracts were part and parcel of petitioners' illegal purpose to select a representative for their employees, place that organization in an openly favored position in the plants, and perpetuate their interference with their employees' freedom of choice by maintaining it in that position (R. 85–103). For almost two years after the passage of the National Labor Relations Act, petitioners supported a group of Employees' Representation Plans which they had established in 1933 (R. 85–91; 170–181, 207–208, 216, 424, 808–809, 816–819, 833–835, 842–843, 977–978, 987–988, 1206–1207, 1214–1215, 1243–1244). These Plans, in operation and

effect, were plainly management-controlled unions and were so regarded by the employees (R. 88–90; 183–186, 549, 597, 600, 606–607, 613–614, 625, 651, 821–822).

The decision in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, and companion cases, on April 12, 1937, made plain, however, that the Plans were illegal (R. 91; 187–189, 843–844, 1206). Immediately thereafter Carlisle, the chairman of the Board of each of petitioners and directly and actively in charge of petitioners' labor policy, held two conferences with D. W. Tracy, the International President of the Brotherhood (R. 91; 1202–1203, 1219). On April 16, 1937, four days after the decision, Tracy wrote to Carlisle demanding recognition of the Brotherhood and a written contract (R. 91; 1203, 1204). In complete disregard of the fact, known to Carlisle, that the United was then actively engaged in organizing the employees (R. 93; 1218–1219), and without consulting any of the employees, Carlisle decided to grant Tracy's request (R. 91–93, 94–96; 877, 1204, 1221–1222). Four days later, on April 20, at a meeting of the Plan's officers which he had called, he peremptorily announced that the plans were being abandoned and that as between two necessary evils petitioners were recognizing the Brotherhood in preference to the United (R. 91–93; 189–190, 196, 843–844, 1204–1205). Although at this meeting Carlisle pointed out in reply to various questions from the floor that the employees were free to

join any labor organization (R. 91; 1208–1209), he was clear in his insistence, then and thereafter, that the management was committed to recognition of the Brotherhood as the "sole bargaining body" (R. 91–93, 101; 189–190, 195, 877–878, 891–892). This was a plain stand by petitioners that irrespective of the employees' wishes (R. 91–93, 94–96; 190–192, 194–195, 199, 203, 215–216, 891–892, 1204–1205), and despite their protest (R. 94–96; 190–191, 199, 203, 222, 240, 245–246, 259, 858–859), the choice of the management as to a collective bargaining agency was to control.

Carlisle had not at that time any information as to the size of the Brotherhood's membership among its employees (R. 92–93, 101; 1235–1238). Concededly petitioners' intention was to effect a shift of the seven Plans into seven Locals of the Brotherhood (R. 96, 99; 235, 252, 885, 1221–1223, 1235–1239). In accordance with this intention, petitioners initiated a vigorous campaign of intimidation and coercion to force the employees into the Brotherhood. Various of petitioners' officers expressed their views in favor of the Brotherhood and stated that its recognition was a blow to the Committee for Industrial Organization (R. 93–94; 206). Department heads and foremen, during working hours, solicited employees to join the Brotherhood and generally assumed the role of Brotherhood organizers, accompanying this activity with warnings and threats (R. 98; 224–225, 229, 245–248, 264–265, 294–295, 730–737, 746–748, 753–

754, 759–764, 849–857, 859–862, 929, 931, 932, 957–960, 980–982, 1033–1036, 1049–1050, 1055, 1070–1074, 1164–1167, 1174–1177, 1179–1181). Carlisle refused to order a halt to these activities on the sole ground that he had not authorized them (R. 95; 220–221, 877, 1210). Brotherhood organizers were given free access to all of petitioners' buildings, and were permitted to solicit employees individually and in groups during working hours, while similar privileges were denied to organizers for United (R. 98; 221, 877, 1139–1143, 1210). Brotherhood dues were collected on petitioners' premises, organizers even occupying offices of foremen for that purpose (R. 98; 737, 765–769, 867–868, 886–887, 1021–1022, 1036). Officers of the Plans, who *en masse* had become officers of the Brotherhood locals, were allowed to continue the exercise of their plan prerogatives on behalf of the Brotherhood during working hours, using petitioners' offices and secretarial services, utilizing expense accounts, and being paid their regular salaries for the time spent on Brotherhood work (R. 98–99; 879, 887–888, 956, 1063–1064, 1073–1074, 1077–1080, 1170–1174).

As the last step, and in completion and consolidation of the scheme, seven contracts were signed with the seven Brotherhood locals. Petitioners had not even then been supplied with information as to the size of the Brotherhood's membership.[18]

[18] Petitioners' first information as to the results of their joint efforts with the Brotherhood to secure members for it was received on June 29, 1937, after all the contracts had been

Nevertheless, petitioners construed the contracts as exclusive collective bargaining agreements, and admitted that they would not bargain collectively with any other labor organization during their existence, even though in terms they were made by the Brotherhood only as the representatives of its own members (R. 100–102, 1234–1235). Three of the contracts were consummated subsequent to the opening of the hearings on June 3, 1937; all were consummated after service of the Board's complaint (R. 100).

On these findings the contracts are clearly illegal. Not only are they a part of a scheme by which petitioners' employees were to be denied the right—guaranteed to them by Section 7 of the Act—freely to choose their own representatives, but they are also the culminating objective of the whole unlawful campaign. The contracts were, therefore, illegal under the Act and fell by reason of such illegality. *United States* v. *Reading Co.*, 226 U. S. 324, 357; *Swift & Co.* v. *United States*, 196 U. S. 375, 396; *Aikens* v. *Wisconsin*, 195 U. S. 194, 205, 206; *Schenck* v. *United States*, 249 U. S. 47, 52; *Duplex Printing Co.* v. *Deering*, 254 U. S.

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signed, and after the Board's case had been closed (R. 101; 1236, 1418). Even assuming the accuracy of the membership claimed by the Brotherhood at that time, it presents a significant contrast to the 15 members claimed by one Brotherhood organizer (R. 867–868) and to the "some members" claimed by Carlisle on April 20, prior to petitioners' campaign of intimidation and coercion. See footnote 19, page 38, *infra*. (R. 194–195, 1222).

443, 465–466. It was plainly an inference of fact for the Board whether the contracts, if continued in effect, would perpetuate petitioners' interference with a free choice of representatives by the employees. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.[19] In the light of the facts of the present case we submit that the Board could have reached no conclusion other than the one that it did. The employees who were coerced into joining the Brotherhood must, in the face of the contracts, have felt that it would be dangerous to withdraw and thereby openly repudiate their employers' choice. Moreover, the contracts, since they were construed by petitioners to be exclusive bargaining contracts, rendered futile any attempt by any of the employees to present their views and demands through representatives of their own choice.

Failure of the Board to require petitioners to cease giving effect to the contracts could only be interpreted by the employees as approval of the choice of representatives which petitioners have made for them. Employees who have not yet joined the Brotherhood would then deem it incum-

[19] Petitioners' repeated assertion (Br., pp. 34, 36, 90) that 80 percent of its employees had joined the Brotherhood by June 29, is, of course, wholly irrelevant. That the number claimed did join need not be denied, but the record indicates plainly that the men did not do so voluntarily, uninfluenced by their employer. What membership the Brotherhood would have obtained in the absence of pressure by petitioners cannot be known until the effects of that pressure, perpetuated by the contracts, is eliminated.

bent upon them to respect their employers' wishes. Even if they did not join the Brotherhood, well-publicized apparent approval of the contracts could only serve to deter them from joining other labor organizations, at which petitioners' finger of disapproval has unmistakably been pointed."

Nor is the order, under these circumstances, either drastic or unusual. It is appreciably less restrictive than that which was approved in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc., supra,* in which the employer was required not only to withdraw all recognition from a labor organization and cease all relations with it, contractual and otherwise, but also to abstain from any such relation in the future, which is not the effect of the order here. Contracts have frequently been abrogated in order to provide adequate and appropriate affirmative relief, not only by the Board,[21] but also by its predecessor

[20] Petitioners' suggestion (Br., pp. 35–37) that requiring them to cease giving effect to the contracts furthered, rather than prevented, industrial strife is actually a contention that since employees have failed to strike in opposition to petitioners' denial of their rights, the Board must also acquiesce. The argument is expressly denied by the finding by Congress in Section 1 of the Act that unfair labor practices by employers leads to industrial strife. See p. 19, *supra.* The Act does not seek a forced truce resulting from successful repressive activity, but a stable peace based upon the adjustment of differences through negotiations between the employer and freely designated representatives of his employees.

[21] *Matter of Clinton Cotton Mills,* 1 N. L. R. B. 97; *Matter of Atlas Bag & Burlap Company, Inc.,* 1 N. L. R. B. 202;

established by Public Resolution No. 44, 73d Cong., 2d Sess. (48 Stat. 1183.) [22] The power to order petitioners to refrain from giving effect to illegal contracts is unquestionably constitutional. *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*, 289 U. S. 266, 282; *United States* v. *Reading Co.*, 226 U. S. 324; *United States* v. *Southern Pacific Co.*, 259 U. S. 214, 234–235; *Continental Insurance Co.* v. *United States*, 259 U. S. 156, 171; *Philadelphia, Baltimore & W. R. Co.* v. *Schubert*, 224 U. S. 604.[23]

Matter of Carlisle Lumber Co., 2 N. L. R. B. 248; *Matter of Hill Bus Company, Inc.*, 2 N. L. R. B. 781; *Matter of Lion Shoe Company*, 2 N. L. R. B. 819; *Matter of National Electric Products Corporation*, 3 N. L. R. B. 475; *Matter of Lenox Shoe Co., Inc.*, 4 N. L. R. B. 372; *Matter of Pacific Greyhound Lines*, 4 N. L. R. B. 520; *Matter of National Motor Bearing Company*, 5 N. L. R. B. No. 66; *Matter of Zenite Metal Corporation*, 5 N. L. R. B., No. 73; *Matter of Red River Lumber Company*, 5 N. L. R. B. 90; *Matter of Taylor Trunk Company*, 6 N. L. R. B., No. 11; *Matter of Missouri-Arkansas Coach Lines, Inc.*, 7 N. L. R. B., No. 28. See also, *Matter of Stone Knitting Mills Co.*, 3 N. L. R. B. 257; *Matter of Mine B Coal Company*, 4 N. L. R. B. 316; *Matter of American-West African Lines, Inc.*, 4 N. L. R. B. 1086; *Matter of McKesson & Robbins, Inc.*, 5 N. L. R. B., No. 12; *Matter of California Wool Scouring Co.*, 5 N. L. R. B., No. 105; *Matter of Pacific Lumber Inspection Bureau, Inc.*, 7 N. L. R. B., No. 72.

[22] *Matter of Hildinger-Bishop Company*, 1 N. L. R. B. (old) 127; *Matter of Kaynee Company*, 2 N. L. R. B. (old) 33; *Matter of John E. Lucey Shoe Co.*, 2 N. L. R. B. (old) 251.

[23] Petitioners also suggest that the Board was without power to issue Paragraphs 1 (f) and (g) of the order for the reason that no question as to representation of employees

2. PARAGRAPHS 1 (f) AND (g) OF THE ORDER DO NOT DEPRIVE PETITIONERS OF DUE PROCESS OF LAW BY REASON OF ANY ALLEGED FAILURE BY THE BOARD TO REVEAL THAT THE CONTRACTS WERE IN ISSUE

We turn, then, to petitioners' contention that as a matter of procedure, Paragraphs 1 (f) and (g) of the order deprived them of due process of law, in that they were denied an opportunity to meet the contention that the contracts were invalid. The contention is based partially upon an alleged failure to raise the issue at the hearing before the trial examiner, and partially upon an alleged failure to be apprised of the issue after the hearing by reason of the absence of an intermediate report or an oral

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under Section 9 was presented and because the Board dismissed so much of the complaint as alleged violations of Section 8 (2) (Br. pp. 37, 38). Both contentions are without merit. The illegal interference with employees by reason of the contracts must be remedied regardless of whether a majority of the employees have selected a representative other than the Brotherhood under Section 9 (c); indeed, no proper determination of representatives could be made so long as the effects of petitioners' coercion are continued. The same contention was rejected in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261. Nor was it necessary for the Board to find that petitioners had dominated the Brotherhood within the meaning of Section 8 (2). Exclusive bargaining relations may violate the Act either because of the statutory incapacity of one of the parties to represent employees or because the relations were themselves founded on coercion and their continuance perpetuates its effect. In the former case, violation of Section 8 (2) would be the basis of the order. In the latter case, as is true here, it is not the basis of the order, and is entirely irrelevant to the appropriateness of the relief.

argument. In neither respect is the contention meritorious.

A brief survey of the pleadings and the course of the proceedings at the hearing in this case reveals that petitioners were clearly apprised that the validity of the contracts with the Brotherhood locals was directly in issue. The complaint could not, of course, have contained a specific reference to the contracts, since at the time it was issued and served none of the contracts had been executed. It did, however, allege that petitioners were interfering with their employees' rights of self-organization by coercing them to join the Brotherhood and by contributing support to that organization, in violation of Section 8, subdivisions (1) and (2), of the Act (R. 15). These allegations informed petitioners that the legality of their relations with the Brotherhood was challenged; that all acts in furtherance of the coercion and support alleged were the subject of inquiry and would be sought to be proved; and that if proved, they would be corrected by an order of the Board.[24] The complaint indi-

[24] Petitioners make passing reference (Br. p. 6) to the fact that Paragraph 22, which charged petitioners with coercing their employees into joining the Brotherhood and alleged that this conduct was an unfair labor practice within the meaning of Section 8 (1), was not referred to in Paragraph 23 of the complaint, which contained the express allegation that the activities enumerated in the preceding paragraphs affected commerce. The omission was clearly an inadvertance, and could scarcely have been misleading. It

cated, in other words, that the very purpose of the hearing was to bring to light the various methods used by petitioners to violate the Act within the limits specified in the complaint, *i. e.*, petitioners' relations with the Brotherhood. The function of the complaint ended with the specification of these limits. Cf. *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 430–431; *Florida* v. *United States*, 282 U. S. 194, 209; *Philadelphia & Reading R. Co.* v. *United States*, 219 Fed. 988, 992, reversed on other grounds, 240 U. S. 334. Subsequent dismissal of the complaint insofar as it alleged violations of Section 8 (2) did not, of course, deprive petitioners of the notice which they had received by the complaint.

The complaint, accordingly, would have adequately raised the contracts issue even had the contracts been entered into before it was filed. Here there is the additional fact that *after* a complaint had been received which challenged the legality of petitioners' relations with the Brotherhood, petitioners nevertheless during the course of the proceedings entered into contracts with the Brotherhood. Under those circumstances the contracts were subject to the power of the Board to restore the *status quo* as of the time of the service of the complaint. *Jones* v. *Securities & Exchange*

would have rendered Paragraph 22 entirely superfluous and meaningless; and it was corrected by amendment on June 14, before the hearing was far advanced (R. 15).

Commission, 298 U. S. 1, 15, 18; *Wingert* v. *First National Bank,* 223 U. S. 670, 672.

But we need not rest there, for petitioners brought the contracts directly into issue by their verified answer, filed on June 16, 1937, the day on which the last of the seven contracts was executed (R. 58). On July 6, 1937, petitioners formally amended their answer to aver as a defense that the contracts had rendered the matters alleged in the complaint moot and, further, had deprived the Board of "power or jurisdiction to hear or determine any such allegations or proofs or to grant any relief upon the basis thereof * * *" (R. 1200–1201). Since invalid contracts are nullities, and obviously could not have had the effect attributed by petitioners to their contracts with the Brotherhood, reliance by petitioners on the contracts necessarily put their validity in issue.[25] *New York Life Ins. Co.* v. *Aitkin,* 125 N. Y. 660, 672; *Whipple* v. *Brown Bros. Co.,* 225 N. Y. 237, 239–240; *Sarnighausen* v. *Scannell,* 11 Cal. App. 652, 656; *Kenfield* v. *Weir,* 16 Cal. App. (2d) 501, 502; *Richardson* v. *Buhl,* 77 Mich. 632, 656; *McKenzie* v. *Sifford,* 45 S. Car. 496; *Williams* v. *Jefferson Standard Life Ins. Co.,* 181 S. Car. 344,

[25] No reply was required to put such matters in issue by the Act, by the Federal Equity Rules then in force, or by the state practice. Equity Rule 31; New York Civil Practice Act, Section 274; *New York Life Insurance Co.* v. *Aitkin,* 125 N. Y. 660; *Whipple* v. *Brown Bros. Co.,* 225 N. Y. 237.

351–352; *Jordan* v. *Coulter,* 30 Wash. 116. See *City of Denver* v. *Mercantile Trust Co.,* 201 Fed. 790, 810 (C. C. A. 8th).

Nor could the course of the hearings have left petitioners with any doubt that the validity and effect of the contracts were in issue. Counsel for both parties elicited testimony as to the circumstances of their execution. Of the 28 witnesses called by the Board, 19 testified, without objection by petitioners, to facts clearly bearing upon petitioners' unlawful motives in entering into the contracts, and to the precipitate manner in which they were executed following the decision of the *Jones & Laughlin* case by this Court.[26] On petitioners' side, the testimony of Carlisle (R. 1202–1251), who was called immediately following petitioners' amendment of their answer to raise the issue as to the contracts, was devoted almost entirely to the circumstances surrounding the execution of the contracts, in an obvious attempt to establish their validity. This is particularly evident from his testimony on cross-examination (Fols. 3652–3655, 3707–3712, 3715, 3731, 3722–3724, 3700–

[26] Straub (R. 167–297, 804–845); Harding (R. 729–744, 791–799); Symon (R. 745–748, 800–802); McCarthy (R. 749–789); Joy (R. 845–921); McCormick (R. 921–941); Gideon (R. 942–965); Young (R. 967–990); Spalding (R. 991–1020); Balch (R. 1020–1029); Brady (R. 1029–1046); Misbach (R. 1047–1064); Crowell (R. 1065–1076); Shedlock (R. 1076–1086); McGowan (R. 1129–1138); De Lude (R. 1138–1162); Chandley (R. 1163–1169); O'Brien (R. 1169–1178); Lohnes (R. 1178–1182).

3702). The contracts were themselves offered in evidence by petitioners' counsel (R. 1228–1230) after the Board's attorney had requested their production (R. 868–869). Thus the facts disclosing the circumstances under which the contracts were made were fully explored by both sides at the hearing. Under such circumstances, the Board clearly was free to pass on the issue raised. *Oscanyan* v. *Arms Co.*, 103 U. S. 261; *Higgins* v. *McCrea*, 116 U. S. 671, 684–685; *Lee* v. *Johnson*, 116 U. S. 48, 52; *Roberts* v. *Criss*, 266 Fed. 296 (C. C. A. 2d); *Noonan* v. *Gilbert* 68 F. (2d) 775 (App. D. C.).

Final proof of the fact that the pleadings and the course of the hearings had apprised petitioners that the contracts were in issue is furnished by the brief which they submitted to the Trial Examiner, and which was considered by the Board.[27] Approximately thirteen pages of this brief (pp. 2, 15–23, 135–139) were devoted to a description and defense of the contracts. Petitioners' claim of surprise now seems quite inconsistent with the statement in that brief (p. 17) that—

> the Board has no power to make any determination or order, under the Act, in this proceeding, and under such circumstances, in derogation of the contracts lawfully made with a recognized and lawfully existing labor organization, which contract is valid and subsisting under the laws of New York.

[27] A copy of this brief, certified by the Secretary of the Board, has been filed with the Clerk.

We submit, therefore, that in the light of all these factors, petitioners cannot claim to have been unaware from the time the contracts were entered into that they might be invalidated by the order of the Board. The complaint, the answers, the course of the hearings and their own interpretation of the issues as disclosed by their brief all indicate that petitioners not only had, but exercised, an opportunity to present their case with full knowledge that the validity of the contracts was in issue. The requirements of *Morgan* v. *United States,* 304 U. S. 1, 18, upon which petitioners rely, were fully met.

Nor under those circumstances could petitioners have been prejudiced by the absence of an intermediate report and an oral argument before the Board. This Court has specifically and recently held that when the issues were clearly defined, and no other prejudice is alleged, no violation of the Fifth Amendment can be predicated upon the absence of an intermediate report. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.,* 304 U. S. 333, 350–351.

The absence of an oral argument raises a slightly different question. We deal in Point C, *infra,* pp. 55–58, with petitioners' contention that they were entitled to an oral argument whether the issues were adequately defined or not—a contention which goes to the validity of the whole order, rather than simply to the validity of Paragraphs 1 (f) and (g). We deal here solely with petitioners' more

limited contention that the absence of an oral argument deprived them of an opportunity to discover that the validity of the contracts was in issue (Br. p. 74).

The contention is answered, of course, by the facts stated above, which show clearly that petitioners could not have failed to realize from the outset that the validity of the contracts was in issue. Moreover, a complete answer to petitioners' claim is, simply, that they did not ask for either an oral argument or an intermediate report, and had no reason to expect that they would be accorded them without a request. Petitioners, it is true, assert the contrary (Br. pp. 8, 32), but we will show at pp. 56–58, *infra*, that their assertion is wholly erroneous. In these circumstances, no rights were violated. *Federal Radio Commission* v. *Nelson Bros. Bond & Mtge. Co.*, 289 U. S. 266, 287; *National Labor Relations Board* v. *American Potash & Chemical Corp.*, decided June 27, 1938, amended and petition for rehearing denied September 12, 1938 (C. C. A. 9th).

8. EVEN IF PETITIONERS WERE NOT ADEQUATELY APPRISED THAT THE VALIDITY OF THE CONTRACTS WAS IN ISSUE PRIOR TO THE ENTRY OF THE BOARD'S ORDER, THEY WERE NOT PREJUDICED THEREBY

Assuming, however, that petitioners were not in fact adequately informed, prior to the entry of the Board's order, that the validity of the contracts

was in issue in the present proceeding, nevertheless, we submit that they are not in a position to assert a claim of prejudice. After the entry of the order, two courses were open to them. (1) They might have applied to the Board for a rehearing on the issue of the validity of the contracts. (2) They might have applied to the court below, pursuant to subdivisions (e) and (f) of Section 10 of the Act, for leave to adduce additional evidence on the contract issue. Petitioners invoked neither alternative.

This Court unequivocally stated in the *Mackay* case, *supra,* that the Fifth Amendment does not prescribe a particular procedure, but protects substantial rights. If that is true, no claim under the Fifth Amendment should be open to one who fails at least to attempt to take advantage of the remedies afforded him by the administrative procedure. The attempts might have been futile, since neither the Board nor the court below was required by the Act to grant relief under the circumstances. Nevertheless, only if such procedural steps had been attempted without success would petitioners be in the position of the commission men in *Morgan* v. *United States.* See 304 U. S. at pp. 17, 24.

4. PETITIONERS' CONTENTIONS GO ONLY TO PARAGRAPHS 1 (F) AND (G)

Despite the fact that petitioners allege only that they were not sufficiently apprised of the issues

dealt with in Paragraphs 1 (f) and (g), they apparently suggest (Br. pp. 44, 70) that if their objections on this score be sustained, the whole order should be vacated. We submit that, on the contrary, the remainder of the order would be unaffected. There is no contention that the asserted failure to apprise them that the validity of the contracts was in issue in any way prejudiced them on any other branch of the case. No decision cited by petitioners supports the proposition that a holding that one portion of the order was entered without due notice and hearing requires that all other wholly independent portions of the order be set aside. Reason requires, we submit, that the order be enforced except as to any portion which may be held to have been entered without the due notice and hearing required by the Fifth Amendment.

B. PARAGRAPH 2 OF THE ORDER, INSOFAR AS IT REFERS TO STEPHEN L. SOLOSY, IS IN ALL RESPECTS VALID AND PROPER

Petitioners' claim to a denial of due process insofar as Paragraph 2 of the order is concerned is based upon the refusal by the Board to hear the proffered testimony of two witnesses. In the circumstances, we submit that the Board's action was entirely proper.

1. THE REFUSAL TO HEAR THE WITNESSES AT THE ADJOURNED HEARING WAS REASONABLY WITHIN THE BOARD'S DISCRETION AS TO THE CONDUCT OF THE HEARINGS

On June 23, 1937, the Board's trial attorney announced that the Board's case would probably be completed on the following day (R. 1102). When the Board's case closed on that day, June 24, petitioners' counsel requested an adjournment until July 6 to enable him to prepare petitioners' case and for the purpose of receiving the testimony of Carlisle and Dean, both then unavailable (R. 1186–1187). The Trial Examiner offered to recess the hearing until the following day, June 25, to receive the testimony of the available witnesses (R. 1311), but the offer was apparently not acceptable to petitioners. Petitioners' counsel did, however, ask for and obtain from the Trial Examiner permission to request a ruling by the Board itself (R. 1191). The Trial Examiner then recessed the hearing until July 6 for the purpose of receiving the testimony of Carlisle, reserving his own decision on whether the testimony of Dean and other witnesses would be received at that time (R. 1192).

Petitioners thereupon presented the matter directly to the Board by letter (R. 1545–1547). The Board replied, stating that the testimony of both Carlisle and Dean would be received on July 6, but that any other witnesses should have been produced on June 24 or 25, and would not be heard on July

6 (R. 1548–1550).[28] It should be noted, in view of petitioners' complaint that the decision was made by the Board (Br. pp. 28–31, 71), that petitioners themselves suggested that course (R. 1191).

In compliance with this ruling, after Carlisle and Dean had testified on July 6 the Trial Examiner refused to hear the testimony of Tompkins, a witness called by petitioners (R. 1309–1313). Petitioners' counsel then made an offer of proof as to the evidence he wished to elicit from Tompkins and another witness concerning the discharge of Stephen L. Solosy, and also of one Philemon Ewing (R. 1314–1316). The complaint contained no allegations covering Ewing, and no order was made with respect to him. No further offer of proof was made by petitioners (R. 1316).

In these circumstances, we submit, the refusal on July 6 to hear witnesses who were available on June 24 and 25 was reasonably within the Board's discretion concerning the "mode of conducting trials, the order of introducing evidence, and the times

[28] At the conclusion of the adjourned hearing on July 6, petitioners' counsel suggested that the additional testimony which he wished to present be taken, so that it would be available. The Trial Examiner, following the Board's ruling, refused to follow that course (R. 1312). Petitioners correctly point out (Br. p. 71) that in a letter of July 8, after the hearing, the Board erroneously stated that the suggestion had been made by the Trial Examiner, and rejected by petitioners' counsel. Petitioners are in error, however, in asserting that the Board's original ruling was based to any extent upon this misapprehension. The mistake was solely as to the events of July 6; the ruling, made on July 2 (R. 1548), states the basis upon which the Board acted.

when it is to be introduced." *Philadelphia & Trenton R. Co.* v. *Stimpson,* 14 Pet. 448, 463; *Cox* v. *Hart,* 145 U. S. 376, 380–381; *Fidelity & Deposit Co.* v. *Bucki & Son Lumber Co.,* 189 U. S. 135, 143; *Franklin* v. *South Carolina,* 218 U. S. 161, 168; *E. Griffith Hughes, Inc.* v. *Federal Trade Commission,* 77 F. (2d) 886, 887–888 (C. C. A. 2d) certiorari denied, 296 U. S. 617.

Moreover, petitioners are not in a position to assert an infringement of constitutional rights. Pursuant to subsections (e) and (f) of Section 10 of the Act, petitioners might have applied to the court below for correction of the alleged prejudice. Their opportunity to do so was, in fact, specifically called to their attention in the Board's answer to the petition for review (R. 1698–1699). Nevertheless, petitioners did not apply. As the court below held, petitioners may not claim that their rights under the Constitution or the Act were prejudiced by their failure to pursue them. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 47.

2. IN ANY EVENT, THE OTHER PORTIONS OF THE ORDER ARE NOT AFFECTED

Contrary to the implications of petitioners' brief (pp. 73, 103), the offer of proof made by petitioners' counsel went to the single issue of Solosy's discharge (R. 1309–1316).[29] Obviously, petitioners

[29] The offer also included evidence as to the discharge of Philemon Ewing. Ewing, however, was not mentioned in the complaint, nor was he ordered reinstated.

cannot now contend that evidence as to any other allegation of the complaint was excluded. *Herencia* v. *Guzman*, 219 U. S. 44; *Williams* v. *Commissioner*, 44 F. (2d) 467 (C. C. A. 8th), *Hass* v. *United States*, 31 F. (2d) 13 (C. C. A. 9th); *Romeo* v. *United States*, 24 F. (2d) 527 (C. C. A. 9th); *Maryland Casualty Co.* v. *Simmons*, 2 F. (2d) 29, 30 (C. C. A. 5th); *Wustum* v. *Kradwell*, 270 Fed. 546, 551 (C. C. A. 7th).

The Board's error, therefore, if any there was, goes only to the findings and order regarding Solosy. Prejudice to petitioners cannot possibly extend further. No more here than with respect to Paragraphs 1 (f) and (g) (see pp. 49–50, *supra*) should a holding that there was error with respect to one small portion of an order vitiate the entire proceedings.

The cases cited by petitioners (Br. p. 72) are not to the contrary. *Interstate Commerce Commission* v. *Northern Pacific Ry. Co.*, 216 U. S. 538, which is typical, held only that if evidence relevant to the entire order were improperly excluded, the entire order would be set aside. The decision is indisputably correct, but is completely inapplicable.

C. APART FROM THE CLAIM THAT PETITIONERS WERE NOT ADEQUATELY APPRISED OF THE ISSUES, THE ABSENCE OF AN ORAL ARGUMENT BEFORE THE BOARD DID NOT DEPRIVE PETITIONERS OF DUE PROCESS

Petitioners' first contention as to the absence of an oral argument, based on the assertion that it

would have apprised them that the validity of the contracts with the Brotherhood was in issue (Br. p. 74), has already been answered. See pp. 47–48, *supra*. Petitioners also make the further contention (Br. p. 32) that even on the assumption that the issues were clear and well known to both sides, the absence of oral argument vitiates the entire order. Their position is untenable (1) because petitioners did not ask for oral argument, and (2) because they were permitted to, and did, file a written brief setting forth their contentions.

1. It is a complete answer to the contention to point out that no right is violated when it does not appear that the complaining parties "sought any other hearing than that which was accorded." *Federal Radio Commission* v. *Nelson Bros. Bond & Mtge. Co.*, 289 U. S. 266, 287. Cf. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 47. Petitioners attempt, it is true, to avoid this obvious principle by seeking in their description of the proceeding to create the impression that they repeatedly requested opportunities for oral presentation of their case, which the Board denied (Br. 8, 32). An accurate statement of the proceedings will show that petitioners neither asked for an oral argument, nor had any reason to expect that one would be accorded them without a request.

After service of the complaint, but before the hearing, petitioners filed with the Board a motion

to dismiss the complaint on the ground that the Board was without jurisdiction (R. 19–21), for "a hearing upon this motion" (R. 20), and for a transfer of the proceedings to the Board itself in Washington, D. C., for a "hearing and decision of this motion and any further proceedings herein" (R. 21). The motion to dismiss, later renewed, was denied (R. 1200). No question is now raised as to that ruling. The motion to transfer the proceedings was denied on June 2, 1937, prior to the opening of the hearings (R. 38, 143), and a Trial Examiner was appointed in accordance with the usual practice (R. 37).

Interpreted most liberally, the request for a transfer of the proceedings to the Board in Washington, D. C., could only mean that the Board, if it denied the motion to dismiss, should itself sit to hear the evidence. The motion does not refer to oral argument, and, we submit, it is obvious that there was no intention to request it.

Nor did petitioners have any reason to believe that no decision would be made until an oral argument had been had. After the conclusion of the hearing the Board, in accordance with Article II, Section 37 of its Rules and Regulations, *infra*, pp. 77–78, which had been served upon petitioners with the complaint (R. 16), ordered the proceeding to be transferred to and continued before itself (R. 64). Under Section 38 of the same Article, *infra*, p. 78, it was thereafter within the discretion of the

Board to adopt any one of four enumerated procedures: (a) to direct the Trial Examiner to prepare a report; (b) to decide the matter forthwith upon the record or after the filing of briefs or oral argument; (c) to reopen the record for further evidence; or (d) to make other disposition of the case.[30] Consequently, during the period from September 29, 1937, to November 10, 1937, when the order was entered, it was at all times clear that the Board might, in the absence of a request for argument or an intermediate report, elect to "decide the matter forthwith upon the record." Petitioners made no request that any other procedure be adopted, a course which diligent assertion of their rights would certainly seem to require.[31] The Board therefore proceeded to decide the case with-

[30] Petitioners' suggestion (Br. p. 76) that Section 38 does not apply because it is restricted to the situation where a case has been transferred to the Board for the purpose of receiving evidence, is demonstrably erroneous. The Section applies in terms to "*any* proceeding on which the Board has assumed jurisdiction in accordance with Section 37." The contention is also expressly negatived by the fact that under Section 38 the Board may require a trial examiner's report, an impossibility if petitioners' construction is adopted. Moreover, petitioners' argument only proves that Section 29 of the Rules, *infra*, p. 77, applies. Under that Rule a request for oral argument would still be necessary.

[31] Section 38 does not expressly state that a request for oral argument may be made, or, if made, will be granted. The section does provide, however, that the Board may decide the case "forthwith upon the record, or after the filing of briefs or oral argument." The Board may obviously pursue the first course if neither the second or third, or both, are requested.

out argument but after consideration of the comprehensive brief which petitioners filed with the Trial Examiner. It was guilty of no "arbitrary refusal" (Br. pp. 44, 74) to grant petitioners any opportunity they desired to present their case. It is the invariable practice of the Board to grant leave to submit briefs or to argue orally before it upon request of the party proceeded against. This practice has not been departed from in the instant case.

2. Moreover, petitioners here had already presented their argument in writing in their printed brief of 152 pages filed with the Trial Examiner (R. 71). This brief was, of course, part of the materials transmitted by the Trial Examiner to the Board and was considered by it in reaching its decision (see, *e. g.*, R. 83). The Fifth Amendment does not require that one who has filed a brief should also be heard orally. "Argument may be oral or written. The requirements are not technical." *Morgan* v. *United States*, 298 U. S. 468, 481. Inasmuch as petitioners filed a brief, their rights were not infringed by the absence of oral argument.

III

The Board's Findings of Fact Are Fully Supported by Evidence

Although petitioners make the blanket assertion (Br. pp. 84, 91) that *none* of the findings of the Board on controverted issues are supported by evidence, and assert generally that hearsay evidence

predominated, they discuss the evidence in detail only with respect to the findings by the Board upon the discriminatory discharges of the six employees ordered reinstated (Br. pp. 91–104). Our detailed discussion here will, therefore, be limited in like fashion to the same issues. We shall briefly summarize the evidence which, we submit, adequately supported the Board's findings.[32] Finally, we shall demonstrate that the assertion with respect to hearsay evidence is without basis in either fact or law.

A. THE FINDINGS WITH RESPECT TO THE DISCRIMINATORY DISCHARGES OF THE SIX NAMED EMPLOYEES ARE FULLY SUPPORTED BY EVIDENCE

Wersing, Greulich, and Wagner.—These three men were employed in the work order bureau of the auditing department of the New York & Queens

[32] Petitioners also suggest (Br., pp. 89–90) that the finding with respect to industrial espionage was unsupported. The evidence in support of the finding is abundant (R. 312; 325–331, 337; 304–305, 317–318, 322; 300–302, 307–308; 319–320, 329–330). Petitioners' real objection to this portion of the order appears to be that the practice had been discontinued. Clearly, the discontinuance of an unlawful practice, without any showing or reason to believe that it will not be resumed, is no bar to the entry of an order upon findings supported by evidence that the illegal practices have occurred. *Goshen Mfg. Co.* v. *Myers Mfg. Co.*, 242 U. S. 202; *Armand Co., Inc.*, v. *Federal Trade Commission*, 78 F. (2d) 707, 708–709 (C. C. A. 2d); *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. (2d) 673, 686–687 (C. C. A. 8th). See also *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257, 260; *National Labor Relations Board* v. *Oregon Worsted Co.*, 94 F. (2d) 671, 672 (C. C. A. 9th).

Electric Light & Power Company, Wersing and Greulich as clerks in the "stores accounting" division and Wagner as an accounting assistant in the "fixed capital" division (R. 413, 468, 527, 707, 723). Each had started work for the company in 1929 and, to the time of discharge, received the customary wage increases (R. 461–462, 527–528, 534–535, 703–708). It is not controverted that all three were capable employees (R. 462, 474–476, 535–543, 546, 709–711, 713–715, 1268).

In 1934 the three men were active in organizing and establishing in petitioners' system Local 103 of the Independent Brotherhood of Utility Employees and thereafter, as officers of the Local, were outstanding in its affairs, including particularly the publicizing and correction of grievances (R. 413, 420, 438, 471–472, 479, 495–496, 530–533, 547–549, 558–559, 573–576, 715–716, 718). Petitioner's partial restoration of a pay reduction during 1934 was attributed in the main to their efforts (R. 425–429, 504–505, 529–530). They likewise persistently attacked the Employees' Representation Plans as company-dominated organizations (R. 430, 438, 471–472, 479, 531–533, 547, 549, 559–561, 718). They made no secret of their activities; the articles in the Local's publication wherein petitioners' practices were condemned were either signed by them, or made frequent references to their position (R. 472, 532, 558, 574). Their participation in conferences as members of union committees likewise brought their activities to the attention of petitioners' officials, in particular on November 15,

1935, two weeks prior to their discharges (R. 422–435, 438–441, 469–470, 551–552, 556–558, 562). On that occasion Vice-president Dean evinced a resentful reluctance to deal with the committee on which they served (R. 440–441).

On November 29, 1935, all three of the men were discharged after separate but similar interviews with Payne of the personnel department, the reason assigned being that single men in other departments were being replaced by married men in the inventory department, which was to be discontinued (R. 478, 563–565, 719). Payne could not explain why single men with less seniority were being retained in preference to these three employees (R. 478, 566, 719), but Dean explained at the hearing that a triple test of efficiency, family responsibility, and seniority had been applied in order to make place in the auditor's department for six married men transferred from the inventory department, and that Wagner, Greulich, and Wersing, being unmarried and no more efficient that the married men, were selected for discharge (R. 1261, 1268, 1285–1287, 1257–1259). The defect in this explanation is apparent. There were 100 employees in the work order bureau to which the six men were to be transferred (R. 1276–1277); if the three men here involved had been compared with all of the others it might explain why single men of less seniority among the 100 had been kept in preference to them. But comparing Wagner,

Greulich, and Wersing with only the six transferees, as Dean did (R. 1268), obviously explains nothing. There is no plausible explanation in the record why unmarried men among the 100 employees in the same division who had less seniority than the three here involved (R. 720) were retained while they were dismissed.

Since there is no indication that lack of "seniority" or "family responsibility" caused the three discharges, we turn to the third standard, "efficiency". There is no claim that the three men were less efficient than single employees of less seniority who were retained. No efficiency ratings were available and the heads of the departments, who decided upon the discharges with Dean, did not consult the men's immediate supervisors (R. 1278, 1287–1288).[33] Wagner, it will be noted, was concededly an employee of more than average efficiency (R. 1268), and Greulich had been commended for his ability by his supervisors (R. 535–543, 546); their discharges are cogent indications that efficiency was not a weighty consideration.

In fact, even Dean was not too clear upon how the triple test had been applied. Although seniority was to be considered only if marital status did

[33] The selections for discharge were made by Dean, acting with the heads of the personnel, inventory and auditing departments (R. 1287). There is no claim that reports from bureau, division or section heads or from immediate supervisors were available or considered.

not differ (R. 1261–1262), he emphasized that the three unmarried men discharged were junior in point of service to the six transferees (R. 1268). The nature of the proferred explanations, in brief, buttresses the Board's conclusion, strongly indicated in any event by the simultaneous discharge of three outstanding leaders and officers of Local 103, that petitioners utilized the lay-offs accompanying the close of the inventory department to eliminate the officers of the then prominent Local.

Kennedy and Emler.—These two men were first-class linesmen in the overhead division of the New York & Queens Electric Light and Power Company (R. 588–589, 676). Both were employees of many years standing and received regular promotion and pay increases to the time of their discharges (R. 585–590, 671–676). Although a Plan representative, Kennedy denounced it as a company-dominated union (R. 613–614, 1390), with the result that petitioners' officials and supervisors termed him a "radical" and an "agitator" and advocated his expulsion from the Plan (R. 618–619, 623–624). Thereafter both Kennedy and Emler joined Local 103, were elected to office and were prominent in its affairs and activities (R. 605–607–608, 610, 628–631, 640, 677–678, 698). Both men served on the union committee, Kennedy as its chairman, which negotiated concerning the discharges of Wersing, Greulich, and Wagner (R. 630–631, 682).

Thereafter Kennedy, believing he could do most effective work within the framework of the Plan, decided to run for office in it again and, on June 11, 1936, was elected Plan representative for the overhead bureau (R. 640–644). Six days later he and Emler were advised that they were being laid off as "surplus employees" despite their eight years of continuous service, and on June 19 were formally discharged (R. 585, 647–648, 686–687, 692, 700).[34] Both Kennedy and Emler were senior to a large number of other employees in their bureau and they were the only first-class linesmen eliminated over a long period of time before and after their discharge (R. 650–651, 1292). At the time of their discharge both men were engaged in specific unfin-

[34] Petitioners claim that attempts were made to obtain work for Kennedy and Emler with the Consolidated Edison Company of New York (Pet. Br., p. 100). What occurred was that Payne, who laid the two men off on June 17, advised them to apply for positions then open at Consolidated which required certain technical qualifications that Kennedy and Emler did not possess. The men applied but were rejected (R. 660–662, 691–693, 699). The personnel officer who rejected them mentioned inferior jobs, at far lower pay than the men had been receiving, but added that those jobs were probably all filled anyway (R. 692). Thereafter Payne formally discharged the men on June 19 (R. 692). Petitioners' efforts to obtain work for Emler in December 1936 are even more illuminating. Emler was recommended by petitioners for a job with a company not connected with petitioners' system, but was warned that it would be embarrassing to petitioners if he started any "funny business" during his new employment (R. 693–694). Emler took the job at a substantially lower salary than he had been paid by petitioners (R. 694–695).

ished tasks which required their replacement (R. 652, 689).

At the hearing Dean attributed the discharges of Kennedy and Emler to reductions in the overhead bureau necessitated by the change of work in Queens from overhead to underground (R. 1262). But Dean manifested his incompetence so to testify by admitting his ignorance of lay-offs before and after the two discharges (R. 1297, 1300–1301). Nor did he controvert Kennedy's testimony that after the discharges, additional men were transferred to the overhead bureau, which was placed on a 6-day week (R. 652–653). Concerning the reason why 12 other men with less seniority were kept in preference to Kennedy and Emler, who were qualified to do both overhead and the increasing amount of underground work (R. 1302–1303), Dean vaguely referred to the "quality of their work," but demonstrated clearly that only their supervisors were qualified to pass on the men's efficiency (R. 1292–1293). Cf. *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, 57. The supervisors did not testify and no efficiency ratings were introduced, nor had comparative efficiency been assigned as a cause at the time of discharge.[35]

[35] Petitioners imply (Br. pp. 101–102) that Kennedy's absences from work were due only "to some extent" to illness. The statement is directly contrary to the record. Kennedy testified that his absences were caused by illness arising from his employment and were on order of petitioners' physicians (R. 666–667). Dean, although he admit-

The lack of plausible explanation for the discharge of these men buttresses the already strong inference that petitioners wished to rid themselves of active union leaders. The discharges occurred but a week after Kennedy's election as Plan representative. During his previous tenure in that position he had proved worrisome to petitioners and it was certain that he would now renew his activity within the Plan. Discharge would entirely terminate his relationship with the Plan, while transfer to another company in the system would deprive him of his position as representative and place him among employees to whom he was unknown and upon whom he would, presumably, have little or no influence. The evidence is persuasive that for these reasons petitioners gave Kennedy a choice between discharge and transfer to an inferior position in another borough of the city. These reasons are, in the main, equally applicable to Emler, who was the last of the group actively associated with Wersing, Greulich, Wagner, and Kennedy, in Local No. 103. Petitioners made a clean sweep.

Solosy.—This man was employed by the Consolidated Gas Company as an inspector of certain

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ted that he did not know and had never attempted to find out what the doctor's diagnoses were, stated that the illness may have been attributable to other causes than his work for petitioners (R. 1293–1294). Petitioners' brief goes even beyond Dean's testimony by expressing doubt that the absences were all due to illness, contracted in the course of employment or otherwise.

instruments measuring the B. t. u. content of gas (R. 340–341). At the time of his discharge he had worked for that company for many years, and his steady pay increases attest his competency (R. 340–342, 345–346).

In 1934 Solosy, as a member of the Plan, served on a committee which was selected by the employees in his department to investigate the Plan and which reported it to be company-dominated (R. 353–355). Thereafter he joined the Independent Brotherhood of Utility Employees and was very active in its organization work, in the solicitation of members and in the publication of a monthly, "The Gas Man" (R. 359–366, 389). He and Philemon Ewing, the only other active union man in his department (R. 366), were trailed by detectives who filed reports with petitioners regarding their union activity (R. 300–302, 307–308, 319–320, 329–330). On January 17, 1936, both these men were discharged (R. 346). Solosy was told that his discharge was due to the closing of one of petitioners' gas plants (R. 347).[36] His supervisor, upon being pressed for details, said "You know more about it than I do" (R. 347), and doubted whether Solosy would ever be called back to work (R. 348). There were seven employees in Solosy's division, of whom he alone was discharged, although he was senior in point of service to two of the other six (R. 396, 398). The reason as-

[36] This is the sole ground set forth in the offer of proof which the Board rejected (Br. p. 103; *supra*, pp. 53–54).

signed at the time of discharge, and elaborated in the offer of proof, does not explain why Solosy was eliminated while his juniors were retained.

The only plausible explanation appears when it is realized that by the six discharges just discussed, and that of Ewing which is not complained of, petitioners eliminated all the principal organizers and leaders of Local 103, which was becoming increasingly active and annoying to petitioners in attacking the Plans (R. 353–357, 398–399, 504–505, 548–549, 556–560, 1096–1101, 1215). This elimination was too complete to have been a coincidence resulting from disinterested reduction in personnel. Petitioners, ignoring persuasive evidence indicating the true motive for the discharges (*Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 559), urge that certain other union members were not discharged (Br. p. 104). The fact that all union members employed by petitioners were not discharged is not a material consideration. *Cf. Associated Press* v. *National Labor Relations Board,* 301 U. S. 103. Petitioners fully accomplished their task by eliminating the six leaders, and thus set a significant example of what would happen to others whose union activity became too prominent.

B. THE ADMISSION OF HEARSAY EVIDENCE AT THE HEARING WAS WHOLLY PROPER

Petitioners' claim that illegal hearsay was made in great part the basis of the Board's finding is

wholly unfounded in fact, and is, in any event, without merit in law as ground for complaint. While admittedly some hearsay evidence was introduced at the hearing, the findings of the Board upon all of the charges alleged in the complaint are founded upon direct and primary evidence. The evidence upon which the Board based its findings as to jurisdiction is in the form of a stipulation entered into between counsel (R. 1318–1388) and is not in dispute. The findings with respect to the issue of coercion are in large part based upon the admission of Carlisle, the chief executive officer of Consolidated (R. 1202–1250), and the testimony of Straub, an officer of Consolidated's Employee Representation Plan and later active in the Brotherhood, whose knowledge was detailed and first-hand (R. 167–298, 804–841). The findings as to espionage are made in large part upon the testimony of Charles A. Smith, an operative employed by the detective agency utilized by Consolidated (R. 298–310), and Foster Strader, assistant manager of that agency (R. 310–339). The findings that Consolidated had discharged six men named in the complaint because of their union activity is based not only upon the testimony of the men involved (R. 340–410, 410–522, 526–583, 583–669, 671–703, 703–729), but upon the complete failure of the excuses offered as explanatory of the discharges by Consolidated through Dean, a vice president (R. 1254–1308). Whatever hearsay was admitted was in full corroboration of the direct and first-hand evidence thus introduced, and the Board was entitled to credit it, particularly

as it stood in the record almost entirely without plausible contradiction.

Aside from the foregoing, the claim is without merit. Section 10 (b) of the Act expressly provides that "the rules of evidence prevailing in courts of law or equity shall not be controlling" in proceedings before the Board. Moreover, hearsay evidence is clearly admissible and may be relied upon. *Spiller* v. *Atchison, Topeka & Santa Fe Ry.*, 253 U. S. 117; *National Labor Relations Board* v. *Remington Rand Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, May 23, 1938; *John Bene & Sons, Inc.* v. *Federal Trade Commission*, 299 Fed. 468 (C. C. A. 2d).

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor

organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * * *

SEC. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board

for such purposes, shall have power to issue, and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such or-

der may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall

have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States

upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

The relevant portions of the Rules and Regulations of the National Labor Relations Board, Series 1, as amended, are as follows:

SEC. 29. Any party to the proceeding shall be entitled to a reasonable period at the close of the hearing for oral argument, which shall not be included in the stenographic report of the hearing unless the Trial Examiner so directs. The parties shall be entitled to file briefs or written statements only with permission of the Trial Examiner.

* * * * *

SEC. 37. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may permit a charge to be filed with it, in Washington, D. C., or may, at any time after a charge has been filed with a Regional Director pursuant to Section 2 of this Article, order that such charge, and any proceeding which may have been instituted in respect thereto—

(*a*) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(*b*) be consolidated for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same region; or

(*c*) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in or transferred to such other Region, or for any other purpose.

The provisions of Sections 3 to 31, inclusive, of this Article shall, in so far as applicable, apply to proceedings before the Board pursuant to this Section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this

Section, be reserved to and exercised by the Board. After the transfer of any charge and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to this Section, the provisions of Sections 3 to 36, inclusive, of this Article, shall apply to such charge and such proceeding as if the charge had originally been filed in the Region to which the transfer is made.

SEC. 38. After a hearing for the purpose of taking evidence upon the complaint in any proceeding over which the Board has assumed jurisdiction in accordance with Section 37 of this Article, the Board may—

(*a*) direct that the Trial Examiner prepare an Intermediate Report, in which case the provisions of Sections 32 to 36, inclusive, of this Article shall in so far as applicable govern subsequent procedure, and the powers granted to Regional Directors in such provisions shall for the purpose of this Section be reserved to and exercised by the Board; or

(*b*) decide the matter forthwith upon the record, or after the filing of briefs or oral argument; or

(*c*) reopen the record and receive further evidence, or require the taking of further evidence before a member of the Board, or other agent or agency; or

(*d*) make other disposition of the case.

The Board shall notify the parties of the time and place of any such submission of briefs, oral argument, or taking of further evidence.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. [redacted] 25

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and Its Affiliated Companies, etc., *Petitioners,*

against

NATIONAL LABOR RELATIONS BOARD, *et al.*

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-839; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-832; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-826; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-828; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-829; AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-830, *Petitioners,*

against

NATIONAL LABOR RELATIONS BOARD, *et al.*

(Consolidated Cases.)

PETITION OF ABOVE NAMED BROTHERHOOD AND LOCAL UNIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

ISAAC LOBE STRAUS,
Munsey Building,
Baltimore, Maryland.
CLAUDE A. HOPE,
and
DELAFIELD, MARSH, PORTER & HOPE,
20 Exchange Place,
New York, N. Y.
Counsel for Petitioners.

The Daily Record Co. Print, Baltimore.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No.....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, AND SAID OTHER LOCAL UNIONS, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, *Petitioners,*

against

NATIONAL LABOR RELATIONS BOARD AND UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners, International Brotherhood of Electrical Workers, and said named Local Unions, respectfully pray that a writ of certiorari issue to review the decision of the United States Circuit Court of Appeals for the Second Circuit rendered in the above cause on March 14, 1938 (R. 1737), and the judgment of that Court entered on March 21, 1938 (R. 1737), refusing

to set aside an Order of the National Labor Relations Board of November 10, 1937, and directing that a request of said National Labor Relations Board for the enforcement of said Order be granted.

A.

STATEMENT OF THE MATTER INVOLVED.

Petitioners herein are the International Brotherhood of Electrical Workers and seven of its Local Unions, all affiliated with the American Federation of Labor. The membership of these Locals numbers something over 30,000 out of 38,000 eligible employees of the Consolidated Edison Company of New York, Inc., and its six affiliated Companies, herein referred to as Consolidated Edison (R. 1505).

Contracts were executed in May and June, 1937, between the Brotherhood and its Locals, all of whose members were employees of Consolidated Edison, on the one hand, and the Consolidated Edison and its affiliated companies, on the other. The contracts were each authorized by a majority of the employees of each of the Edison companies and of the respective Local Unions which entered into them. Reference to the contracts (R. 1581) will reveal that they are of the utmost importance with relation to the vital concerns and interests of the workers composing the several Locals in their employment. They contain provisions, among others, for a system of arbitration of disputes relating to employment and stipulate against strikes and lockouts, thus giving practical assurance against any cessation of service by the Companies with which they are made. These contracts were abrogated by the Board's said Order of November 10, 1937.

Charges against the Consolidated Edison Company and its affiliates (R. 4) were filed with the Board on May 5, 1937, by the United Electrical and Radio Workers of America, herein called the United, an affiliate of the Committee for Industrial Organization. A Complaint (R. 7) embodying these charges was issued by the Board May 12, 1937. *Consolidated Edison and its said affiliates were the only parties who were made respondents or defendants in the Complaint and to the proceeding before the Trial Examiner and Board. Neither the Brotherhood nor the Locals were made parties, nor were they brought into the proceedings in any manner whatsoever. The charge of May 5, and the Complaint in its original form, as issued May 12, did not mention or prefer any charge against the Brotherhood or its Locals, nor did the Complaint or any of the several amendments to it make any mention of the contracts or attack their validity or raise any question as to representation or election. Moreover, at no time during the hearings before the Trial Examiner was any statement made, by or on behalf of the Board or any of the parties, that the validity of the contracts or any question of representation or election was in issue. Statements were made by the Board's counsel that there was no question of representation involved* (R. 279). The Complaint was amended June 10 and 14 (R. 13, 14 and 15), after the hearings before the Trial Examiner were begun and substantially advanced. *No amendment until that of June 14 affected the Brotherhood or its said Locals under or within the Act.*

No legal notice, either actual or constructive, was at any time given to the Brotherhood or its said Locals of either the charge of the United of May 5, the Complaint of May 12 or any of the amendments thereto, or of any

action which contemplated the abrogation and annullment of their contracts and the consequent destruction of their property, contractual and personal rights. The methods of giving notice and the service of papers are provided for in the National Labor Relations Act, herein called the Act, in Section 11 (4), as follows:

> "Complaints, orders, and other process and papers of the Board, its member, agent or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof *at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same*".

Article V, Section 1 of the Rules and Regulations of the Board (Series 1, as amended) is the same as the above sub-section, and Section 2 of said article provides:

> "Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. *When service is made by registered mail, the return post office receipt shall be proof of service.* When service is made in any manner provided by such law, proof of service shall be made in accordance with such law."

There is in the Record (18-19) a Western Union Telegraph Messenger Errand Service ticket stating that on May 12, 1937, "3 packages" were sent to "United Elec Radio Workers 1133 Bway; Intl Brotherhood Elec Workers 103E25; Consolidated Edison Co 3 Irving Place". It also has on it: "Lu 3 IBEW D Kaplan". Just what

was receipted for by "D Kaplan" does not appear other than the statement in the ticket that "3 packages" were sent. Who "D Kaplan" is, or what the position, status or authority of such person was, has never been made apparent. The letters and figure "Lu 3" presumably mean Local Union No. 3. *That is not one of the Local Unions of employees, Petitioners herein, in the service of any of the Consolidated Edison Companies.* Even the true address and place of business of Local Union No. 3 is not "103E25" but 130 E. 25th Street. None of the Petitioners herein has an office, business, residence or address at either of those places.

Moreover, the affidavit of Sadie Jacobs, a Board stenographer, as to proof of service of the original Complaint and notice of hearing (R. 18) does not mention any service whatever on the International Brotherhood of Electrical Workers or any of its said Locals, nor does it refer to any messenger errand ticket or the sending of any package by such agency. Her affidavit refers exclusively to alleged service by registered mail, the numbers of which are specified in the affidavit. No return receipts are included, and it is clear that the receipt numbers for registered mail mentioned in the affidavit relate only to the receipts for mail to the Consolidated Edison affiliates named therein.

With reference to the amended notice of hearing of the original Complaint (R. 34), sent out on May 25, the affidavit of Alan J. MacAdams (R. 35-36) states that the amended notice was served upon the Consolidated Edison and its affiliates, at their respective addresses, upon Robert H. Coulson, Esq., 40 Wall Street, N. Y. C., and "International Brotherhood of Electrical Workers, 130 East 25 Street, N. Y. C", by sending to them "at the ad-

dresses indicated, by postpaid registered mail, return receipt requested," the amended notice of hearing of May 25; that he received therefor from the U. S. Post Office, N. Y. receipts for registered articles, dated May 25, 1937, numbered 303160 to 303168, respectively, said receipts being attached as part of the affidavit. The copies of the post office receipts are omitted. *No return receipts are stated in the affidavit to have been received; and no such receipts are included in the Record.* In view of this omission in the Record and in order to ascertain whether or not there were any such return receipts, the Board, after the certified transcript of the Record had been filed by it and had been subjected to particular inspection upon the subject, was requested to search its files to ascertain whether it could find therein a return receipt for registered mail sent on or about May 25, 1937, to "International Brotherhood of Electrical Workers, 130 East 25 Street, N. Y. C.", at which place, as aforesaid, neither the Brotherhood nor its said Locals had any residence, office, place of business or habitation. *No such return receipt was discoverable.*

The Complaint, as finally amended, charged that Consolidated Edison had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of the National Labor Relations Act. [July 5, 1935, 49 Stat. 449; 29 U. S. C. Section 158 (1), (2) and (3), and Section 152 (6) and (7).] *There was no allegation of violation of Section 9 (c) of the Act relating to representation or election.*

Pursuant to amended notices to the Respondent Companies, none of which, as aforesaid, were served upon or brought to the attention of the Brotherhood or its said

Locals, hearings were held before the Trial Examiner on June 3, 10, 11, 14, 15, 16, 17, 23 and 24 and July 6, 1937. The Brotherhood and its said Locals, not being parties, and not having been served with any legal process, summons, citation or notice, took no part whatever in the proceedings before the Trial Examiner or the Board.

On June 14, 1937, an important and very radical amendment of the Complaint was made. This consisted of changing the figure "21" to "22" in paragraph "23" and in paragraph "24" of the Complaint (R. 15).

The intent and effect of said Amendments of June 14, 1937, were to make the Complaint charge that the matters mentioned in paragraph "22" as to the Brotherhood "affected commerce" as defined in the Act, by bringing the allegations of paragraph 22 within paragraphs 23 and 24 of the original Complaint. By those Amendments the matters complained of in paragraph 22 were brought *for the first time within the purview of the Act and within the jurisdiction of the Board.* The Complaint as thus basically and radically amended was never served upon the Brotherhood or any of said Local Unions, nor was any notice of the Complaint, as thus fundamentally modified, mailed or otherwise sent or delivered to the Brotherhood or any of the Local Unions.

On September 29, 1937, long after the conclusion of the hearings before the Trial Examiner in New York on July 6, 1937, and without any Intermediate Report upon his part, the Board summarily ordered the proceedings to be "transferred and continued" before it at Washington, D. C., and, on November 10, 1937, announced its decision and order (R. 65, *et seq.*). The conclusions of law of the Board embraced findings

that Consolidated Edison and its affiliates had violated Section 8 (1) and (3), and that these violations affected commerce within the meaning of Section 2 (6) and (7) of the Act. *The Board specifically found that there had been no violation within the meaning of Section 8 (2) of the Act.* The Order of the Board directed Consolidated Edison and its affiliates, *inter alia, to Cease and Desist from "Giving effect to their contracts with International Brotherhood of Electrical Workers", and "Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees".*

Pursuant to Section 10 (f) of the Act, Petitioners, the Brotherhood and its said Locals, upon learning of the passage of the Board's Order, as well as Consolidated Edison and its affiliates, on November 18, 1937, petitioned the United States Circuit Court of Appeals for the Second Circuit, as persons aggrieved by the final Order of the Board, to review and set aside the Order of November 10, as unconstitutional and void. Answers of the Board and requests for the enforcement of its Order were filed to these respective petitions (R. 1691 and 1711) to which replies were filed by the Petitioners (R. 1726 and 1734).

By stipulation (R. 1736) of counsel for the Board, Consolidated Edison and its subsidiaries, and the Brotherhood and its said Locals, it was agreed that the two said Petitions under Section 10 (f) be consolidated and heard as one case in the Circuit Court of Appeals, and that the record certified by the Board be the only record required to be certified in the cases as consolidated. This stipulation was approved by the Court below, *per* his Honor, Judge Manton (R. 1737) and the cause proceeded accord-

ingly. The Circuit Court of Appeals denied the two Petitions and ordered the Board's Order to be enforced and executed.

On April 2, 1938, Consolidated Edison and its affiliates petitioned this Court for a writ of certiorari to review the decision and Order sought to be reviewed by this Petition.

B.

QUESTIONS PRESENTED.

(1) Were Petitioners necessary or indispensable parties to proceedings abrogating and annulling their contracts?

(2) Were Petitioners entitled to notice of proceedings which abrogated and annulled their contracts?

(3) Were the alleged notice and service of the original Complaint of May 12, and the alleged service of the amended notice of hearing of May 25, 1937, in compliance with constitutional requirements of due process of law, and with Section 11 (4) of the National Labor Relations Act and Article V of the Rules of the National Labor Relations Board?

(4) Were Petitioners denied due process of law by Section 1 (f) and (g) of the Order of November 10, 1937, of the National Labor Relations Board, requiring Consolidated Edison and its affiliates to cease and desist from giving effect to their contracts with Petitioners and from recognizing Petitioners as the exclusive representatives of the employees of Consolidated Edison and its affiliates, when no question as to the validity of the contracts or as to representation for collective bargaining was raised in the charge of May 5 or the Complaint or any amended Complaint, or at the hearings, and the Board

dismissed so much of the Complaint as involved any charges that Consolidated Edison and its affiliates had dominated or interfered with the formation or administration of, or had contributed financial or other support to, Petitioners, contrary to Section 8 (2) of the Act?

(5) Does the National Labor Relations Act authorize the Board to exercise jurisdiction over these Petitioners in their labor relations with Consolidated Edison and its affiliates, which are local operating public utilities doing business wholly within New York, are concededly not engaged in commerce as defined in the Act, and are subject to plenary regulation by New York under its Public Service Law and its State Labor Relations Act?

(6) Did the Order of November 10, 1937, of the National Labor Relations Board, abrogating and annulling the contracts of Petitioners, exceed the authority and power of the Board and comply with the constitutional requirements of due process of law, the National Labor Relations Act, and with the Rules and Regulations of the Board (a) when hearsay and other illegal testimony was admitted before the Trial Examiner and made the basis of findings of fact by the Board, (b) when the Trial Examiner and the Board refused to hear evidence sought to be introduced by Consolidated Edison at the hearings, (c) when the Trial Examiner made no report or findings as contemplated by Article II, Section 32 of the Rules of the Board, and no opportunity was afforded to file exceptions to his report as contemplated by Section 34, (d) when none of the members of the Board saw or heard any of the witnesses who testified before the Trial Examiner, and (e) the Board afforded no opportunity to parties in interest or affected by its final Order to be heard before the passage of the same.

C.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The first and probably basic question in this case is that of the *jurisdiction* of the National Labor Relations Board over these Petitioners, the International Brotherhood of Electrical Workers and its Local Unions, composed of employees in the service of the Consolidated Edison Company of New York, Inc. and its affiliated Companies, named as Respondents in the proceeding instituted by the National Labor Relations Board. It is contended by the Petitioners herein, as well as by said Respondent Companies, that they are not engaged in interstate or foreign commerce within the meaning of the Commerce Clause, Article 1, Section 8, Clause 3, of the Constitution of the United States, or within the term "Commerce" as defined by the National Labor Relations Act, and that the relations of their membership with said Companies as their employers do not affect commerce within or under the Federal Constitution or said Federal Act.

The Circuit Court of Appeals, in its Opinion, rendered March 14, 1938, stated, with reference to said question of jurisdiction, that *"None of the Labor Board Cases decided by the Supreme Court has presented a situation like that at bar"*, and, after reviewing recent decisions of the Supreme Court upon the subject, further stated: *"We recognize that these cases are not decisive of the case at bar, but we think the principles they have announced point to the conclusion we have reached."* It is respectfully submitted that said basic question of jurisdiction of the National Labor Relations Board over these Petitioners and their employers, the Consolidated

Edison Company of New York, Inc. and its affiliated Companies, has not, as expressly recognized and avowed by the Circuit Court of Appeals, been determined by any decision thus far rendered by the Supreme Court respecting the National Labor Relations Act; that the importance of this basic question of jurisdiction, as presented herein, is so manifestly great and far-reaching that exposition herein of that importance is needless; that there is essentially involved a conflict between the Federal jurisdiction and that of the State of New York; and that, accordingly, said question ought to be determined, upon certiorari, by final adjudication upon the part of this honorable Court.

The matters involved in the said question of jurisdiction, as affected by the said Board's Order of November 10, 1937, have a very material and far-extending effect upon these Petitioners, their employers, and approximately ten million people in the City and State of New York, who are the consumers of the products of these Petitioners in the service of their said employers. It would, therefore, seem to be eminently appropriate that the jurisdiction of the National Labor Relations Board over these Petitioners and their employers, and said contracts between them, be adjudicated by the Supreme Court as a finality.

2. The effect of the Opinion and Order of the Circuit Court of Appeals is to maintain the constitutionality of the abrogation of the contracts entered into between these Petitioners and the Consolidated Edison Company of New York, Inc. and its affiliates. The Opinion and Order in this respect present constitutional questions of great and far-reaching importance, which, it is respectfully sub-

mitted, have not been specifically determined by this honorable Court and, therefore, should be finally adjudicated by it as the National Tribunal of last resort.

These Petitioners, as appears herein, respectfully maintain that the Board abrogated their contracts without due process of law, and that they were denied due process in various and highly important respects herein already indicated, which, for brevity, are not repeated here. With reference to them, however, it is respectfully submitted that the fundamental constitutional rights referred to by these Petitioners with respect to the Board's abrogation of their contracts, as said rights are involved herein, should be adjudicated by this honorable Court. The Opinion of the Circuit Court of Appeals indicates substantial doubt upon its part whether the Board's Order invalidating said contracts was an appropriate Order. That it was an appropriate Order, the said Court declared *"is not so clear"*, and in illustration thereof referred to various matters wherein the *Greyhound Case* differs from the case at bar. It is respectfully submitted that there is no decision of the Supreme Court of the United States which decides or deals with the question of the appropriateness of the Board's said Order abrogating said contracts, or with the constitutionality of its Order abrogating said contracts of these Petitioners with their employers, in the several and various constitutional respects raised and presented by the proceedings herein, and that said constitutional questions involving personal, property and contractual rights of these Petitioners, and involved in the administration of the National Labor Relations Act, should be considered and passed upon by this honorable Court.

3. The proceedings before the Board, sanctioned by the decision of the Circuit Court of Appeals, culminating in its Order destroying the contracts of Petitioners, constituted such a departure from the accepted and usual course of administrative procedure as to call for the exercise of this Court's power of supervision. The Order of the Board exceeded the authority and power of the Board, and denied these Petitioners, as well as Consolidated Edison and its affiliates, due process of law guaranteed by the Fifth Amendment in that the Board refused to hear the question of its jurisdiction over the proceedings, and, moreover, never granted a lawful hearing to these Petitioners or to Consolidated Edison and its affiliates, all of whom had vital rights and interests in the matters finally disposed of by the Order. After allowing the matter to sleep from July 6 to September 29, 1937, when the Board ordered it to be "transferred and continued" before itself, and thence until its Order of November 10, 1937, no hearing was ever accorded to any interested person upon any element of the case, either of fact or of law. This Court has held that mere recitals of procedure cannot be regarded as conclusive in determining whether in conducting an administrative proceeding statutory requisites and due process of law have been complied with. The Court below referred to the Board's refusal to hear certain witnesses present in the hearing room as "*unreasonable and arbitrary*", and plainly indicated that the successive steps leading to the Board's final Order did not meet with its approval, and intimated that a review by this Court was desirable to clarify the question of the propriety of the Board's procedure. The Court said, with regard to Petitioners' contentions in this respect:

"The first (complaint of Petitioners') relates to the Board's direction that the proceeding be transferred to it pursuant to Rule 37. The result was that the Trial Examiner made no intermediate report, as contemplated by Rule 32, and the Petitioners had no opportunity to file exceptions to his report as contemplated by Rule 34. Nor were they accorded oral argument before the Board, although it must be presumed that their brief (Consolidated Edison) submitted to the Trial Examiner came to the Board's attention. *This procedure is not one likely to inspire confidence in the impartiality of the proceedings.* It results in the findings of fact being made by persons who did not see the witnesses—a matter which may have far reaching consequences in view of the very limited power conferred upon the Courts to review the Board's findings of facts."

With particular regard to the kind of testimony admitted over objection, some of which amounted to third degree hearsay, upon which decisive findings of fact were made by the Board, it is respectfully submitted that this cause presents a situation calling for review and supervision by this Honorable Court.

WHEREFORE, your Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of all proceedings in case numbered on its Calendar No. 178 and on its Docket No. 15,686, and entitled as above shown, and that said judgment of the Circuit Court of Appeals may be reversed or modified by this Honorable Court, and that your Petitioners may have such other and fur-

ther relief in the premises as to this Court may seem just and proper.

And your Petitioners will ever pray, etc.

Dated, April 11, 1938.

Isaac Lobe Straus,
Claude A. Hope,
and
Delafield, Marsh, Porter & Hope,
Counsel for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No._____

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, AND SAID OTHER LOCAL UNIONS, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, *Petitioners*,

against

NATIONAL LABOR RELATIONS BOARD AND UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINIONS BELOW.

The Opinion of the United States Circuit Court of Appeals has not been officially reported. It was filed March 14, 1938, and is in the Record beginning at page 1737. The decision, findings of fact, and conclusions of law of the National Labor Relations Board begin in the Record at page 65. The Order of the Board is at page 127.

II.

JURISDICTION.

Petitioners seek a review by certiorari pursuant to Judicial Code, Section 240 (a), as amended by the Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938 [U. S. C. Tit. 28, Sec. 347 (a)], and Section 10 (e) of the National Labor Relations Act of July 5, 1935, c. 372, Sec. 10, 49 Stat. 453 [U. S. C. Tit. 29, Sec. 160 (e)]. The date of the decision sought to be reviewed is March 14, 1938 (R. 1737), and the date of the judgment is March 21, 1938, (R. 1748). It was entered by the United States Circuit Court of Appeals for the Second Circuit in pursuance of its rulings refusing to set aside a final Order of the National Labor Relations Board of November 10, 1937, and directing that a request of said Board for the enforcement of said Order be granted. The matter came before the United States Circuit Court of Appeals for the Second Circuit pursuant to Section 10 (f) of the National Labor Relations Act, by written petitions of the Petitioners herein (R. 1554) and of Consolidated Edison Company of New York, Inc., and its affiliated companies, Brooklyn Edison Company, Inc., et al. (R. 1473), parties aggrieved by the said Order of the Board, seeking a review and vacation of the said Order of the National Labor Relations Board of November 10, 1937. By stipulation of counsel for the National Labor Relations Board, Consolidated Edison Company of New York, Inc. et al., and International Brotherhood of Electrical Workers, et al., respectively (R. 1736), confirmed by the Court, the two Petitions for review under Section 10 (f) were consolidated and heard as one case on the calendar of the Circuit Court of Appeals, and the record certified to said Court

by the National Labor Relations Board was accepted as and declared to be the only record required to be certified, printed and filed in the case.

III.

STATEMENT OF THE CASE.

A full statement of the case has been given under heading A in the petition for writ of certiorari, and for brevity the statement is not repeated here.

IV.

SPECIFICATIONS OF ERRORS.

(1) The Circuit Court of Appeals erred in finding and holding that Petitioners were not necessary or indispensable parties to the proceedings before the Trial Examiner and the National Labor Relations Board, which resulted in the passage by said Board of its Order abrogating and annulling Petitioners' contracts and destroying their contractual, personal and property rights.

(2) The Court below erred in not finding and holding that Petitioners were entitled to notice of the proceedings before the Trial Examiner and the National Labor Relations Board, which resulted in the passage by said Board of the Order abrogating and annulling Petitioners' contracts and destroying their contractual, personal and property rights.

(3) The Court below erred in not finding and holding that the alleged notice and service of the original Complaint of May 12, and the attempted service of the amended notice of hearing of May 25, 1937, did not comply with constitutional requirements of due process of law, and did not comply with Section 11 (4) of the Na-

tional Labor Relations Act and Article V of the Rules of the National Labor Relations Board.

(4) The Court below erred in finding and holding that Petitioners were accorded due process of law in the passage of Section 1 (f) and (g) of the Order of November 10, 1937, of the National Labor Relations Board, requiring Consolidated Edison and its affiliates to cease and desist from giving effect to their contracts with Petitioners and from recognizing Petitioners as the exclusive representatives of the employees of Consolidated Edison and its affiliates, when no question as to the validity of the contracts or as to representation for collective bargaining was raised in the charge of May 5, the original Complaint, or the Complaint as amended, or at the hearings, and the Board dismissed so much of the Complaint as involved any charges that Consolidated Edison and its affiliates had dominated or interfered with the formation or administration of, or had contributed financial or other support to, Petitioners, contrary to Section 8 (2) of the Act.

(5) The Court below erred in finding and holding that the National Labor Relations Act authorizes the National Labor Relations Board to exercise jurisdiction over the Petitioners in their labor relations with Consolidated Edison and its affiliates and over the matters complained of to the Board and ruled upon by it, and that the Act, as construed, applied and administered by the Board in this case, complies with the Fifth and Tenth Amendments to the Constitution of the United States.

(6) The Court below erred in finding and holding that the Order of November 10, 1937, of the National Labor Relations Board, abrogating and annulling the contracts

of Petitioners, was within the authority and power of the Board, and complied with the constitutional requirements of due process of law as protected against violation by the Fifth Amendment to the Constitution of the United States, and with the Act and Rules and Regulations of the Board.

(7) The Court below erred in upholding the Order of November 10, 1937, of the National Labor Relations Board and in sanctioning the admission before the Trial Examiner of hearsay and other illegal testimony upon which findings of fact were made by the Board, the rulings of the Trial Examiner and the Board refusing to hear important and pertinent evidence offered by Consolidated Edison, the procedure of the Trial Examiner who made no report or findings, and afforded no opportunity to file exceptions to his report as contemplated by Article II, Sections 32 and 34 of the Rules of the Board, the passage of the Order by members of the Board who neither saw nor heard any of the witnesses who testified before the Trial Examiner, the action of the Board in affording no opportunity to either Petitioners or other parties in interest to be heard before the passage of the said Order of November 10, 1937.

V.

ARGUMENT.

I.

Petitioners were necessary and indispensable parties to the proceedings before the Trial Examiner and the Board, and were entitled to legal notice thereof, in view of the invalidation of their Contracts by the final Order of the Board.

The case relied on by the Court below in denying Petitioners' contention that it was a necessary party, namely,

National Board v. *Pennsylvania Greyhound Lines*, 302 U. S. ——, presented an entirely different factual and legal situation from the instant case. There the Employees' Association was not, as here, a *bona fide*, independent and recognized labor organization, but was found to be a company dominated union in violation of Section 8 (2) (violation of this Section was dismissed here), and the control of the management so permeated every aspect of the Association's operations that, as argued by the Government there (See Board's petition for writ of certiorari in *Pennsylvania Greyhound* case, No. 413, October Term, 1937, p. 17), *"the Association and the management cannot be regarded as separate entities. * * * Notice to respondents* (management) *was thus in any event notice to the Association."* And further:

> "Nor is the argument that 'the union enjoined has not been notified or heard, entitled to any weight. * * * *If it were true that Employees Association was 'enjoined' by the Board's order it will be readily conceded that the Association would have been an indispensable party and should have been joined.* But the Board's order is not addressed to the Employees Association, *it imposes no obligation upon the Association, and the Association is not bound by it in any way. The order is directed solely against respondents and restrains their conduct only."*

And the Board as a further reason for its position pointed out that the Association there, after the Board's decision was made public, *did not petition for review under 10 (f)*, as was immediately done by these Petitioners here.

It is thus seen that there is no reasonable parallel between the *Greyhound* case and the instant one. There the question was merely as to the disestablishment of a company dominated union; here solemn agreements pro-

viding for a system of arbitration of disputes relating to employment and stipulating against strikes and lockouts were struck down. There the Government's position was that the management and the Association were one; here the facts and the *finding of the Board* are the reverse of that proposition. There was no application by the Association for review under 10 (f) there; while here Petitioners applied for review immediately upon publication of the Board's Order. There the Government conceded that if the Association was *enjoined* by the order, or if the order had imposed obligations on or bound the Association, it would have been an indispensable party. Here, Petitioners are, in plain effect, affirmatively *enjoined* from exercising contractual rights, and of this there can be no dispute, although the Order runs only to Consolidated Edison and its affiliates, because the only possible result of the Order is to dissolve Petitoiners' contractual obligations which would otherwise be binding and in full force and effect.

General Inv. Co. v. *Lake Shore, etc., R. Co.*, 260 U. S. 261, 285-286, cited by this Court in the *Greyhound* case as authority for the ruling that the Association was not an indispensable party, may well be cited as authority for Petitioners' position in that respect in the case at bar. That case involved a suit by a shareholder to prevent two corporations from carrying out an agreement for a consolidation, *where the agreement had not yet been ratified or executed;* but this Court held that as to certain allegations of the bill which affected joint rights, a situation analogous to the one at bar, both parties were indispensable parties, saying (285):

> "As to so much of the bill as sought to enjoin the New York Central Company from voting its shares

in the Lake Shore Company and to enjoin the latter from permitting it to vote them, *we think it is obvious that the New York Central Company was an indispensable party, and that with it neither appearing nor reached by any effective process no other course was open than to dismiss that part of the bill. Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 235, 246; *Taylor & Co.* v. *Southern Pacific Co.*, 122 Fed. 147, 152, 154."

All persons having a substantial interest of property or liberty in the subject matter or object of a proceeding are indispensable parties to it. The Order of November 10, 1937, destroyed property, personal and contract rights of inestimable value to, and inflicted irremediable injury upon, the Petitioners herein. *Nevertheless, they were neither named nor brought in as parties to the proceeding, and were not before the Board, actually or constructively, when it ordered the destruction of their rights.* Therefore, it is respectfully submitted, the omission of these Petitioners as indispensable parties to this proceeding renders the whole proceeding, and particularly the Order of the Board so far as it affected these Petitioners in the grave aspects of which they complain, unconstitutional and void.

Mallow v. *Hinde*, 12 Wheat. 193, 6 L. ed. 599.
Barney v. Baltimore, 6 Wall. 280, 18 L. ed. 825.
Russell v. *Clark*, 7 Cranch 69.
Shields v. *Barrow*, 17 How. 130, 15 L. ed. 158.
Gregory v. Stetson, 133 U. S. 579, 33 L. ed. 792.
Swan Land, etc. Co. v. *Frank*, 148 U. S. 603, 37 L. ed. 577.
Nashville, etc. R. Co. v. *Orr*, 18 Wall. 471, 21 L. ed. 810.
Ribon v. Chicago, etc. R. Co., 16 Wall. 446, 21 L. ed. 367.

Minnesota v. *Northern Securities Co.*, 184 U. S. 199, 235, 46 L. ed. 499.
Garzat v. *DeRubio*, 209 U. S. 283, 52 L. ed. 794.
Lee v. *Lehigh Valley Co.*, 267 U. S. 542, 69 L. ed. 782.
Commonwealth Trust Co. v. *Smith*, 266 U. S. 152, 69 L. ed. 219.
Niles-Belmont-Pond Co. v. *Iron Moulders Union*, 254 U. S. 77, 65 L. ed. 145.

In *Employers' Reinsurance Corp.* v. *Bryant*, 299 U. S. 374, 381, 81 L. ed. 289, 293, this Court said:

"It is conceded, and rightly so, that the district court was without personal jurisdiction of the defendant, and that in the absence of such jurisdiction the court was without power to proceed to an adjudication. * * * In this instance the dispute or controversy was not properly within the jurisdiction of the district court unless * * * (3) the defendant was before the court by reason of a general appearance or *a valid service of process. Each of these elements of jurisdiction was essential, and if any was wanting there was an absence of proper jurisdiction. The defendant was not before the court, and therefore it was without jurisdiction to proceed with the suit.* Counsel for the petitioner assume that the presence of the defendant was not an element of the court's jurisdiction as a federal court; but the assumption is a mistaken one. *By repeated decisions in this Court it has been adjudged that the presence of the defendant in a suit in personam, such as the one now under discussion, is an essential element of the jurisdiction of a district (formerly circuit) court as a federal court, and that in the absence of this element the court is powerless to proceed to an adjudication.*"

In 21 Corpus Juris, Equity, Sec. 277, page 282, it is said:

"All the parties to a contract are ordinarily indispensable parties to a bill in equity for its enforce-

ment, *or for its rescission and cancellation*, or reformation, or to enjoin its performance *or its breach*, particularly where they have joint or common rights or liabilities. The rescission of an agreement requires the presence of all claiming property through such agreement."

It is further said in 21 Corpus Juris, Equity, Sec. 276, page 273, in reference to indispensable parties:

"This class includes all persons who have an interest in the controversy of such a nature that a final decree cannot be made without either affecting their interests or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. Accordingly, persons whose interests will necessarily be affected by any decree that can be rendered are necessary and indispensable parties, and the Court will not proceed to a decree without them."

Continuing, the said section of Corpus Juris, at page 277, further says:

"The principle underlying the rule as to indispensable parties is fundamental and underlies the administration of justice in all courts of equity. It is that no proceedings shall take place with respect to the rights of any one, except in his presence. The rule as to indispensable parties is neither technical nor one of convenience, but is of imperative obligation."

In 1 Foster, Fed. Pr. (6th ed.), Section 120, page 724, it is said:

"*Parties indispensable to a decree.* No suit, however, can proceed unless the court have before it as parties all persons who will be directly affected by the decree sought, or whose obedience is necessary to its enforcement, when it does not appear that they consent thereto. A person is affected by a decree

when its rights against, or liability to, any of the parties to the suit is thereby determined. * * *

"Every party to a contract, whether of sale or for another purpose, except one who has released or assigned his interest * * * is a necessary party to a suit to enforce it; or to set it aside."

See also section 110, pp. 677-678; section 120, pp. 726-727.

II.

Neither the attempted service upon Petitioners of the notice of May 12, nor that of the amended notice of May 25, 1937, was a valid service of process, or compliance with Section 11 (4) of the Act or Article V of the Board's Rules, or with the constitutional requirements of due process of law.

The provision of the Act, Section 11 (4), (*ante*, p. 4) referring to process and service, whether by mail, telegraph or personally, specifies that it must be made at "the principal office or place of business of the person required to be served," and Article V, Section 1 of the Board's Rules is to the same effect. Neither of the two attempts at service here was directed to the principal office or place of business of either the Brotherhood or any of its said Local Unions, but each time there was an attempt to serve Local Union No. 3 of the International Brotherhood of Electrical Workers, 103 or 130 East 25 Street, N. Y. C., none of the members of which are employees of Consolidated Edison or its affiliates, and which is not one of the Local Unions whose contracts were destroyed. As to proof of service, the Act, Section 11 (4) provides that the "verified return of the individual so serving the same setting forth the manner of such

service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same." The service of May 12, 1937, was apparently attempted to be made by telegraph errand service but, as set forth under heading A of the petition for writ of certiorari, the receipt for the same (R. 18-19) is woefully deficient in showing anything that can be regarded as a valid service of process on the Brotherhood or its said Locals. On the contrary, it shows, if anything, that packages were left with an individual who may or may not have been connected with a local union which was not one of the Local Unions of employees of Consolidated Edison or any of its affiliates, nor a union whose contract was nullified by the Board's Order. Moreover, the affidavit (R. 17-18) wholly omits any reference to the telegraph errand service ticket. This receipt, in the light of the authorities hereinafter cited, wholly fails to show a valid or effective service of the Complaint and notice of hearing of May 12 upon these Petitioners.

Similarly, the affidavit of the clerk—stenographer (R. 35-36) fails to show a valid or effective service of the amended notice of hearing of May 25 upon the Brotherhood or the Local Unions of employees in the Consolidated Edison system, but shows that the notice was sent to "International Brotherhood of Electrical Workers, 130 East 25 Street, N. Y. C.", which is not, as aforesaid, one of the Local Unions whose contracts were destroyed or whose members are employed in the Consolidated Edison System. The return receipts are omitted from the record, *no "return receipts" are stated in the affidavit to have been received, and no such receipts are included in*

the transcript. Moreover, search by the Board among its files failed to disclose any return receipt from "International Brotherhood of Electrical Workers" which has not and never had any residence, office, or place of business at "130 East 25 Street, N. Y. C." No effort was ever made to serve the Brotherhood, whose office in Washington, D. C., is well known, or any of the Local Unions whose contracts were destroyed. That there was no proper or valid service is affirmatively manifest.

The general principle here directly applicable is well settled and familiar that where a special administrative board or tribunal is clothed with jurisdiction for particular purposes, such jurisdiction in cases in which its exercise is attempted must be affirmatively shown by the proceedings themselves to have been acquired. Such special jurisdiction is never presumed, but must positively appear to support judgments or decisions purporting to be within it. And, as is well known, this rule applies especially to administrative boards and tribunals of the Federal Government.

The proposition last stated is found in innumerable judicial decisions, of which perhaps none states it more distinctly than Mr. Justice Feld for this Court in *Galpin* v. *Page,* 18 Wall. 350, 21 L. Ed. 959.

In *Coe* v. *Armour Fertilizer Works,* 237 U. S. 413, 35 S. Ct. 625, 59 L. ed. 1027, this Court condemned a statute as embodying provisions repugnant to due process with respect to *notice* and *actual notice.* The principles there discussed and applied in the elaborate Opinion of this Court are cogently applicable to the facts at bar. In the course of its exposition of the many aspects of the subject, this Court said:

"*Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires.* In *Stuart* v. *Palmer*, 74 N. Y. 183, 188, * * * the Court said: '*It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing, and an opportunity to be heard.' The soundness of this doctrine has repeatedly been recognized by this Court.*"

See also:

U. S. ex rel Turner v. *Fisher*, 222 U. S. 204, 56 L. ed. 165.

In *Galpin* v. *Page*, 18 Wall. 350, 21 L. ed. 959, above quoted, Mr. Justice Field emphatically said:

"It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, *until he has been duly cited to appear*, and has been afforded an opportunity to be heard. Judgment without *such citation* and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered."

In *1 Foster Fed. Pr.* (6th ed.) Sec. 167 A, p. 972, it is said:

"A statement that service has been made upon the defendant's agent does not authorize the presumption that such agent had the right to receive service of process."

Boultbee v. *International Paper Co.*, 229 Fed. 951.

The "*process*" required to be made or served upon individuals, whose *property or personal rights are to be disposed of* by the adjudication of a cause, must bring or summon such individuals into the cause and require their actual or constructive presence before the Court.

Employers, etc. Corp. v. *Bryant*, 299 U. S. 374; 81 L. Ed. 289.

That service on Local Union No. 3 is, in law, *not* a service on any of the petitioning Local Unions herein, or the International Brotherhood of Electrical Workers, all of whom are profoundly interested in the matters which the Board dealt with as within the Complaint and determinable thereupon, has been often judicially declared.

United Mine Workers v. *Coronado Coal Co.*, 259 U. S. 344, 60 L. Ed. 975.

In *Dean* v. *International Longshoremen's Ass'n, et al.*, (Dist. Ct. La.), 17 Fed. Supp. 748, directly herein in point, the Court said:

"As was pointed out by the Supreme Court in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 345, 42 S. Ct. 570, 66 L. ed. 975, these *international labor unions* are entities, separate and distinct from the members who compose them and from the *local organizations*. It is true that case did not involve a question of citation or jurisdiction, but, if it be true, as must be conceded, that they have rights as juridical personages distinct from the members or locals who compose them, then it necessarily follows that they cannot be brought into Court by service merely upon a member, but must be cited through someone having authority either expressed or necessarily implied from his relation to the association or the duties which he discharges. Mayo has not been shown to possess any such authority • • •.

See *Christian v. Inter. Ass'n of Machinists*, 7 F. (2d) 481; *Singleton v. Order of Ry. Conductors*, 9 F. Supp. 417."

In *Christian* v. *International Ass'n of Machinists, et al.* (D. C. Ky.), 7 Fed. (2) 481, also directly in point, the Court said:

> *"So, also, it must be held that the chairman or any other officer of a local union is not a representative of the International Union for service of process.* There is no more reason for holding that he is than that a mere member of such union is. As to some of the defendants the individual on whom process was served sustained no official relation to a local union. It would have made no difference if he did. * * * It should be noted that in the *Coronado* Case the Supreme Court, through Chief Justice Taft, said: 'For these reasons, we conclude that the International Union, the District No. 21, and the 27 local unions were properly made parties defendant here, and properly served by process *on their principal officers.*'
>
> *"* * * It is not to be blinked at that these unions, International and local, artificial units and entities, and suable as such, cannot be brought before the Court, save by service of process on a direct representative, whose relation thereto is such that it is reasonable to infer that the service of such process on him will be brought home to the union which he represents. They are entities, distinct and separate from their membership and subordinates, as much so as a corporation is an entity distinct from its stockholders or subordinate organization."*

In 63 *Corpus Juris*, Trade Unions, Sec. 94, p. 705, it is said:

> *"On the other hand, service of process on an officer of a local union and a member of a general union*

is insufficient to give the court jurisdiction of the latter."

See also:

Coronada Coal Co. v. *United Mine Workers*, 268 U. S. 295, 45 S. Ct. 551, 69 L. ed. 963.

United Brotherhood of C. & J. v. *McMurtrey*, 179 Okla. 575, 66 Pac. (2) 1051.

Singleton, et al., v. *Order of Ry. Conductors of America*, (D. C. Ill.), 9 Fed. Supp. 417.

United Mine Workers v. *Pennsylvania Mining Co*, (C. C. A. 8), 300 Fed. 965.

Pennsylvania Mining Co. v. *United Mine Workers*, (C. C. A. 8), 28 F. (2d) 851.

III.

Petitioners were denied due process of law by Section 1 (f) and (g) of the Board's Order, abrogating their contracts and directing non-recognition of the Brotherhood as exclusive representatives of employees, when neither the validity of the contracts nor representation was in issue, or embraced in the charge, the Complaint or amended Complaint, or raised at the hearings or at any other time, and the Board dismissed so much of the Complaint as involved company domination or support contrary to Section 8 (2) of the Act.

Even if notice of the original Complaint and hearing upon it had been served upon Petitioners prior to the amendments of June 14, 1937, the Complaint did not contain or make any charge of unfair labor practices or of any offense affecting commerce and within the Act against Petitioners, and, therefore, did not give them any information or notice of any such charge. The Complaint, moreover, made no reference whatever to the contracts or to representation for collective bargaining dealt with by the Board's Order.

The precise point here presented was adjudicated in the recent decision of this Court in *U. S.* v. *Seminole Nation,* 299 U. S. 417, 421-422, 81 L. ed. 316, 318-319. The Opinion of the Court by Mr. Justice Butler, collating the Supreme Court decisions on the subject, discusses it as follows:

> "The jurisdiction of the lower court was limited to claims sued on before the expiration of the period within which the United States consented to be sued. *It did not extend to any cause of action which was not alleged in plaintiff's original petition.* * * * The judgment may not be sustained as to any item that is not included in a cause of action set up in the original petition or that was by the findings of the lower court or otherwise put upon a ground not there alleged. *Harrison* v. *Nixon,* 9 Pet. 483, 503, 9 L. ed. 201, 208; *Boone* v. *Chiles,* 10 Pet. 177, 209, 9 L. ed. 388, 399; *Garland* v. *Davis,* 4 How. 131, 148, 11 L. ed. 907, 915. It may not be upheld as to any item that is not supported by definite findings of fact extending to all essential issues and which, unaided by statements in the court's conclusions of law or its opinion, are clearly sufficient to entitle plaintiff to recover. *United States* v. *Esnault-Pelterie,* 299 U. S. 201, 205, ante, 123, 57 S. Cit. 159." See also:
>
> *Windsor* v. *McVeigh,* 93 U. S. 274, 23 L. ed. 914.
>
> *Arredondo* v. *Arredondo* 23 U. S. 376, 56 L. ed. 476.
>
> *New Orleans* v. *Citizens Bank,* 167 U. S. 371.
>
> *Washington, A. & G. R. Co.* v. *Washington,* 10 Wall. 299.

Due process of law guaranteed by the Constitution requires definite information and notice to the person whose rights are to be affected by any proceeding in a

court or before an administrative board or tribunal, of the claim or complaint against him, as well as of the order or judgment sought. The notice must be such that the person to be affected by the proceeding may be advised from it of the charge or claim against him, and of the relief sought from the court or other tribunal wherein the charge, claim and application for the relief are preferred. Judicial decrees or judgments, or administrative adjudications and orders, affecting the liberties or property of citizens, in the absence of such notice to the party to be affected, violate the fundamental principles of our law and cannot be sustained. It is an axiom not only of constitutional law, but of pleading and practice that one may not bring a suit or proceeding for one cause of action and recover a judgment for another, much less recover an order or judgment taking away property, or of conviction for offense, without suit and notice of the claim or charge upon which the order or judgment is founded. The decisions to that effect are virtually without number.

These principles are vigorously applied, and the authorities sustaining them collated in *In re Rosser,* 101 Fed. 562, (C. C. A. 8th, per Circuit Judge Sanborn) a leading and frequently followed case on this subject, to which this Honorable Court is particularly referred upon the point here under consideration.

After reviewing the authorities and the proceedings leading up to the final order, Judge Sanborn said (568):

> "Such a proceeding lacks every element of due process of law. It contains no notice to the party affected of *the claim against him,* or of *the proposed action upon it,* no opportunity to contest the questions of fact which it presents by the cross-examina-

tion of the claimant's witnesses or the presentation of his own, and no chance to be heard upon the questions of law which it involves. *It considers without notice, condemns without hearing, and renders judgment without trial.* The order of the referee was unlawful and void."

After the amendments of June 14 in the Complaint, there was no service whatsoever of said Complaint so amended, nor of any notice of hearing thereon made or attempted by the Board, Regional Director, or Trial Examiner upon any of the Petitioners herein. As the amendments of June 14, 1937, of the Complaint made the *first* and *only* complaint or charge *affecting commerce within the Act* against the Brotherhood, the undeniable and indisputable facts above stated present a case to this Honorable Court of an Order of the Board entered upon a Complaint and striking down valuable property and personal rights of the Brotherhood and the Local Unions without any service or notice to them or any of them of any charge or complaint within the very same Act of Congress under which the Order of the Board purported to have been passed, and from which alone the Board derived whatever jurisdiction or authority it possessed. The statement of such a proceeding demonstrates its illegality. If these Petitioners had none of the other grounds of objection herein preferred against the Order, this ground, it is respectfully submitted, suffices to establish the illegality and nullity of the Order.

IV.

The Act does not authorize the Board to exercise jurisdiction over the labor relations of Consolidated Edison and its subsidiaries, and over the subject matter of the Complaint or amended Complaint, including Petitioner's

contracts which the Order destroyed, when said Companies are not engaged in commerce as defined in the Act and do business wholly within New York, by which they are subject to regulation. The Act, as construed, applied and administered by the Board in this case, conflicts with the Fifth and Tenth Amendments to the Constitution of the United States.

The basic question of jurisdiction here presented is so luminously discussed in the Petition for certiorari and supporting Brief of the Consolidated Edison Company of New York, Inc., and its affiliated Companies, filed in this Court in these consolidated cases on April 2, 1938, that, in order to avoid repetition and prolixity herein, we respectfully beg to refer this honorable Court to that Petition and Brief at pp. 2-6; 12-14 and 18-22. The earlier decisions of this Court on the subject in question are reviewed in the recent cases of *Carter* v. *Carter Coal Co.*, 298 U. S. 238-341; *Schechter Poultry Corp.* v. *United State*, 295 U. S. 495-550; the *Jones & Laughlin* case, 301 U. S. 1; the *Freuhauf* case, 301 U. S. 53; *Friedman-Marks* case, 301 U. S. 72; and the recent *Santa Cruz Fruit Packing Co.* case, decided by this Court March 28, 1938. It is respectfully submitted that the four decisions last named do not destroy the distinctions between interstate and intrastate commerce settled and preserved by this Court from the foundation of the Federal Government. And it is particularly urged that not any of those decisions decide the question of jurisdiction herein presented.

The decision in the *Santa Cruz Fruit Packing Co.* case, decided by this Court March 28, 1938, two weeks after the decision and a week after the judgment rendered herein by the Circuit Court of Appeals, does not dispose

of the question of jurisdiction as herein presented, inasmuch as in that case about 37 per cent of the total output of the employer was shipped in interstate or foreign commerce, wherein "there was a constant stream of loading and shipping of products". Moreover an *actual strike* had there been in progress, with a cessation of the flow of commerce. Furthermore there was no question at all raised or presented as to the adequacy of State regulation, there being no State regulation of the business of the employer or of its labor relations with its employees. The Consolidated Edison System, and the employees in its service, conducting admittedly an intrastate business, sell only to persons within the State of New York, a few of whom themselves apply the utility produced and sold to them in New York in interstate commerce. A comparatively small amount, not comparable in percentage of the whole to the 37 per cent in the *Santa Cruz Company* case, finds its way not from the Consolidated Edison System, but only indirectly and remotely through a few of its customers in New York City and State, into interstate commerce. The wholly intrastate public utilities of the Consolidated Edison and its affiliates are subject to plenary State regulation, comprehending every feature of production, distribution, and service, and particularly including its labor relations with the Petitioners, under the State Labor Relations Act. There has never been any finding or suggestion that the State Labor Relations Act and Board have been or are in any way inadequate to prevent conditions which might prejudice either intrastate or interstate commerce. It is respectfully submitted that the facts and conditions disclosed by the Record in this case contravene the existence of "such a *close and substantial* relation to interstate commerce that their control is *essential or appropriate*

to protect that commerce from burdens and obstructions". As declared by this Court in its said most recent decisions, the federal power "*must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them * * * would effectually obliterate the distinctions between what is national and what is local and create a completely centralized government. The question is necessarily one of degree*" (*Jones & Laughlin case*, at p. 37).

The principle involved is that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear (*Florida* v. *United States*, 282 U. S. 194, 211), and that the federal should be relinquished to the state power, where its exercise would involve control of or interference with the internal affairs of a domestic corporation of the state (*Pennsylvania* v. *Williams*, 294 U. S. 176, 185, *Hopkins Savings Assn.* v. *Cleary*, 296 U. S. 315).

V.

The Order of the Board abrogating and annulling Petitioners contracts, exceeded the authority and power of the Board, and the proceedings leading to the Order did not comply with the Act or the Board's Rules, and constituted a denial of due process of law in contravention of the Fifth Amendment.

An administrative board of the Federal Government has only the powers conferred upon it by law. When created by Act of Congress or lawful executive order, its powers must be found in the act or order. When such powers are not expressly conferred, they may exist only

by clear and manifest intendment from express grants. Power over and affecting the *life, liberty, property and security of the citizen* may not be taken by inference, but only when the statute under which it is claimed demonstrates a plain intent to grant it.

In *Interstate Comm. Comm.* v. *Cincinnati etc. R. Co.*, 167 U. S. 479, 494-495, 505, 509, 42 L. ed. 243, Mr. Justice Brewer, speaking for this Court with reference to the power to fix rates, said:

> "That Congress has transferred such a power to any administrative body is not to be *presumed or implied from any doubtful and uncertain language. The words and phrases efficacious to make such a delegation of power are well understood and have been frequently used, and if Congress had intended to grant such a power to the Interstate Commerce Commission it cannot be doubted that it would have used language open to no misconstruction, but clear and direct.*"

2 Lewis' Sutherland on Statutory Construction, sec. 627, pp. 1136-1137; sec. 630, p. 1140; sec. 569, p. 1053; sec. 572, pp. 1056-1057; sec. 573, pp. 1058-1060; sec. 562, p. 1046; sec. 564, p. 1048; sec. 565, pp. 1048-1049; sec. 546, p. 1019; sec. 493, pp. 921-922; sec. 499, p. 931; secs. 520-525, pp. 963-974; sec. 720, pp. 1310-1311.

Potter's Dwarris on Statutes, 224.
59 C. J., pp. 1127-1128.

There can be no intent of a statute not expressed in its words, and a legislative intention not expressed in some appropriate manner has no legal existence.

Dewey v. *U. S.*, 178 U. S. 510, 44 L. ed. 1170.
Lee Bros. v. *Cran*, 63 Conn. 433.
Union Life Ins. Co. v. *Champlin*, 116 Fed. 858 (C. C. A.).

The *"policy of the government"* in reference to any particular subject of legislation is too *"uncertain"* and *"a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes."*

Dewey v. *U. S.*, 178 U. S. 521, 44 L. ed. 1174.
Haddon v. *Collector*, 5 Wallace, 111, 18 L. ed. 519.

"The construction must be liberal in favor of private right, and construction which implies an intention to deny valuable rights should be avoided; statutes are presumed to be passed in full recognition of the constitutional rights of the citizen."

Frazier v. *Leas*, 127 Md. 575.

The Act specifically enumerates the powers and describes the duties of the Board. It is surely to be presumed that every power of considerable importance and extent is *expressed* in the Act. And more particularly, it is respectfully submitted, a power to *abrogate and annul* property and personal rights and contracts must inevitably have been mentioned in the Act, if a grant of such power had been intended. The only power, having even a remote relation to that subject, granted by the Act, is the power given to the Board to investigate and ascertain the facts in the matter of representation of groups or units of employees for collective bargaining with their employers. That power is given and defined by Section 9 of the Act. It is a power of investigation. And, in order to render such an investigation effective, to order an election, by the group or unit of employees in question, of a representative or representatives for the designated purpose. Such election is to be determined by a majority of the employees voting. It may be held under the direction of the Board, whose officers or agents ascertain

the result and report them to the Board, which in turn certifies the result to the employer and employees concerned.

Under the Fifth Amendment, Congress cannot constitutionally deprive citizens of their property without due process of law by impairing the obligation of a contract.

Hepburn v. *Griswold*, 8 Wallace, 623-624.
Carter v. *Carter Coal Co.*, 298 U. S. 310-311, headnotes 24, 25, 80 L. ed. 1188-1189.
Schechter Poultry Corp. v. *U. S.*, 295 U. S. at p. 537, 79 L. ed. 1584.
Eubank v. *Richmond*, 226 U. S. 137, 57 L. ed. 156.
Washington ex rel. Seattle Trust Co. v. *Roberge*, 278 U. S. 116, 121-122, 73 L. ed. 210, 213-214.
Hitchman Coal, etc. Co. v. *Mitchell*, 245 U. S. 251-252.
Lamb v. *Chaney & Son*, 227 N. Y. 418.

In *Hepburn* v. *Griswold*, *supra*, it was laid down by Mr. Chief Justice Chase that the spirit of the prohibition against impairing the obligation of contracts pervades the entire body of legislation by the Federal Government and that an act of Congress whose direct prohibition impairs the obligation of contracts is inconsistent with the spirit of the Constitution. The Chief Justice found support for this view in the Fifth Amendment to the Federal Constitution, declaring that private property shall not be taken for public use without compensation, and particularly that the provision of that Amendment that "no person shall be deprived of life, liberty or property, without due process of law" must be construed "as a direct prohibition of legislation" impairing the obligations of contracts. And the Chief

Justice added: "It is not doubted that all the provisions of this Amendment operate directly in limitation and restraint of the legislative powers conferred by the Constitution."

See also Sutherland, Notes on United States Constitution, pages 641-643; 646-649.

12 C. J., Constitutional Law, sec. 956, pp. 1190-1192; sec. 958, pp. 1192-1194; sec. 961, pp. 1195-1196.

2 Cooley Const. Lims. (8th Ed.), p. 824.

Meyer v. *Nebraska*, 262 U. S. 390, 67 L. ed. 1042.

Lochner v. *New York*, 198 U. S. 45, 49 L. ed. 937.

In *Willoughby on the U. S. Constitution* (2nd ed.), sect. 1196-1800, *et seq.*, it is said:

"No *specific* inhibition is laid upon the Federal Government by the Constitution with reference to the impairment of the obligation of contracts. *The Government is, however, forbidden by the Fifth Amendment to deprive persons of property without due process of law and without just compensation. In so far, then, as contract rights may be treated as property, they are protected from direct impairment by federal action.* This was definitely declared in the first legal tender decision of *Hepburn* v. *Griswold*, 8 Wall. 603.

"In the Sinking Fund cases it was declared: 'The United States cannot, any more than a State, interfere with private rights except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, *but equally with the States they are prohibited from depriving persons or corporations of property without due process of law.*"

VI.

The testimony of the Board's witnesses violated the basic principles of evidence essential to due process of law.

The rulings of the Trial Examiner and the very many objections to testimony, *en masse*, were affirmed in one indiscriminate fiat of the Board (R. 71) and ratified by the Court below without other reason than that hearsay is admissible in Board proceedings. Much of such illegal testimony was made the basis in great part of the Board's decision and Order, which were rendered without that lawful evidence required by just judicature as indispensable to judicial dealings with substantive rights.

The due process clause assures a full hearing before the court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and to have judicial findings based upon it.

B. & O. R. Co. v. *United States*, 298 U. S. 368-369, 80 L. ed. 1224.

Ohio Water Co. v. *Ben Avon*, 253 U. S. 287, 64 L. ed. 908, and the other decisions cited in note 29 appended to the above passage, 80 L. ed. 1224.

Morgan v. *United States*, 298 U. S. 468, 80 L. ed. 1288.

Brown v. *Mississippi*, 297 U. S. 286, 287, 80 L. ed. 687, 688.

Hebert v. *Louisiana*, 272 U. S. 312, 316, 71 L. Ed. 272.

As illustrations of typical statements of witnesses admitted in violation of the substantial rules of evidence guaranteed by due process of law for the protection of substantial rights, see Record, pages: 214, 215; 221;

248, 249; 256, 257; 261, 262; 275; 279 to 285; 418, 419; 447; 448, 449; 453 to 455; 458, 459; 526; 554; 555; 732, 733; 764, 765; 788; 868; 883; 884; 888; 889; 960; 1023; 1045; 1098; 1100; and 1161.

When the Board directed that the case be transferred to it pursuant to Article II, Section 37 of the Rules, the result was that the Trial Examiner made no intermediate report as contemplated by Section 32, and there was no opportunity afforded to file exceptions to the report as contemplated by Section 34. No opportunity was presented either to file briefs or argue orally before the Board. With regard to this kind of procedure, the Court below felt impelled to observe:

> "This procedure is not one likely to inspire confidence in the impartiality of the proceedings. *It results in findings of fact being made by persons who did not see the witnesses—a matter which may have far-reaching consequences in view of the very limited power conferred upon the courts to review the Board's findings of fact.*"

In *Morgan* v. *U. S.*, 298 U. S. 468, L. ed. 1288, involving an order of the Secretary of Agriculture under an Act of Congress, this Court, referring to the duties and powers of the Secretary under the Statute, said:

> "There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact. • • •
>
> "A proceeding of this sort requiring the taking and weighing of evidence, determinations of fact based upon the consideration of the evidence, and the making of an order supported by such findings has a quality resembling that of a judicial proceeding. Hence, it is frequently described as a proceeding of quasi-judicial character. The requirement of

a 'full hearing' has obvious reference to the tradition of judicial proceedings in which *evidence is received and weighed by the trier of the facts.* * * * *The 'hearing' is the hearing of evidence and argument.* If the one who determines the facts which underlie the order has *not considered evidence* or argument, it *is manifest that the hearing has not been given.*"

In *Interstate Commerce Commission* v. *Louisville & Nashville Railroad Co.*, 227 U. S. 88, 33 S. Ct. 185, 57 L. ed. 431, in construing a federal Statute relating to hearings before an administrative body in connection with rate-fixing, this Court said (p. 91):

"But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the *facts proved. A finding without evidence is arbitrary and baseless. And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our Government.* It would mean that where rights depended upon *facts,* the Commission could *disregard all rules of evidence,* and capriciously make findings by administrative fiat. Such authority, however beneficiently exercised in one case, could be injuriously exerted in another, *is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.*

"In the comparatively few cases in which such questions have arisen, it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; *if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence'* * * *."

Consolidated Edison and its affiliates were not given a hearing upon the amended Complaint against them after the close of the testimony before the Trial Examiner on July 6, 1937. Although they filed a brief, on July 15, with the Trial Examiner, the case rested and slept until the Board by its Order of September 29, 1937, required it to be *"transferred and continued"* before itself. Counsel for Consolidated Edison Companies were informed of that Order. They never heard anything more from the Board until informed that it had disposed of the case by its Final Order of November 10, 1937. The Trial Examiner neither gave them a lawful *hearing* upon the evidence, nor did he formulate, as the Act provides, an Intermediate Report upon the testimony, and transmit such a Report to the Board. From and after July 6, he remained inactive and silent. The Board did likewise from July 6, to September 29, 1937, when its silence and inaction were momentarily interrupted only by its Order that the case be "transferred and continued" before it, following which its silence and inaction were resumed and continued until it suddenly launched its bolt of November 10, 1937. It gave no notice of any hearing; it invited to no hearings; it neither asked for, nor authorized, any appearance, argument or advices from the C unsel for Consolidated Edison. It had no Intermediate Report, nor had the Counsel for the Companies any—because none had been made. It had a voluminous record of testimony and exhibits embracing thousands of typewritten pages. The proceeding dealt with a system of seven corporations supplying a public utility to a community of some ten million people and with a veritable army of employees exceeding 38,000 in number—all centered in and serving the Em-

pire State of the Union and its great business and commercial Metropolis. Moreover, the Board felt itself authorized to treat and act upon, as within the Complaint before it, important contracts wherein were involved the labor services and vital welfare of over 30,000 employees, the large and important business of the several Companies and the comforts, conveniences and essential needs of millions of people, and also a most important and delicate constitutional question of conflicting authority and jurisdiction between a State and the Federal Union. In spite of all that, the Board never gave the Consolidated Edison Companies a *hearing* from the time its Trial Examiner closed the taking of testimony before himself until it closed the case by final judgment against the Consolidated Edison Companies.

With respect to the Brotherhood and the Local Unions of Employees of the Companies, neither notice nor hearing was given them or any of them, by the Board, its Director or Examiner, at any stage of the proceeding from beginning to end.

In *Morgan* v. *U. S. et al., supra,* this Court said:

> "But, in determining whether in conducting an administrative proceeding of this sort the Secretary has complied with the statutory prerequisites, *the recitals of his procedure cannot be regarded as conclusive.* Otherwise, the statutory conditions could be set at naught by mere assertion. If upon the facts alleged, the 'full hearing' required by the statute was not given, plaintiffs were entitled to prove the facts and have the Secretary's order set aside. Nor is it necessary to go beyond the terms of the statute in order to consider the constitutional requirements of due process as to notice and hearing. For the statute

itself demands a full hearing and the order is void if such a hearing was denied."

See also:

St. Joseph Stock Yards v. *United States*, 298 U. S. 38, 73.

Interstate Commerce Comm. v. *L. & N. R. Co.*, 227 U. S. 88, 91, 57 L. ed. 431.

Chicago, etc. R. Co. v. *Minnesota*, 134 U. S. 457.

Windsor v. *McVeigh*, 93 U. S. 274.

Riverside Mills v. *Menefee*, 237 U. S. 189.

Roberts v. *Anderson et al.* (C. C. A. 10), 66 Fed. (2) 874.

In re Rosser, 101 Fed. 562.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Honorable Court of its supervisory powers, under the authority hereinabove cited, and that to such end a writ of certiorari should be granted and this Honorable Court should review the decision of the United States Circuit Court of Appeals for the Second Circuit and finally reverse it.

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Office - Supreme Court, U. S.
FILED
SEP 17 1938
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 25.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and Its Affiliated Companies, etc., *Petitioners,*

against

NATIONAL LABOR RELATIONS BOARD, *et al.*

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-839; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-832; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-826; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-828; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-829; AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-830, *Petitioners,*

against

NATIONAL LABOR RELATIONS BOARD, *et al.*

(Consolidated Cases.)

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONERS, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND ITS ABOVE-NAMED LOCAL UNIONS.

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IV. The Act does not authorize the Board to exercise jurisdiction over the Consolidated Edison and its subsidiaries and their labor relations with their employes, or over the subject matter of the Complaint or Amended Complaint, including Petitioners' contracts which the Order destroyed, because said Companies and Local Unions are not engaged in, and their labor relations do not burden, "commerce" as defined in the National Labor Relations Act, the business of the Companies and their employes being wholly within New York, by the Statutes of which they are subject to full and complete regulation. The Act, as herein applied by the Board, conflicts with the Fifth and Tenth Amendments to the Federal Constitution 41

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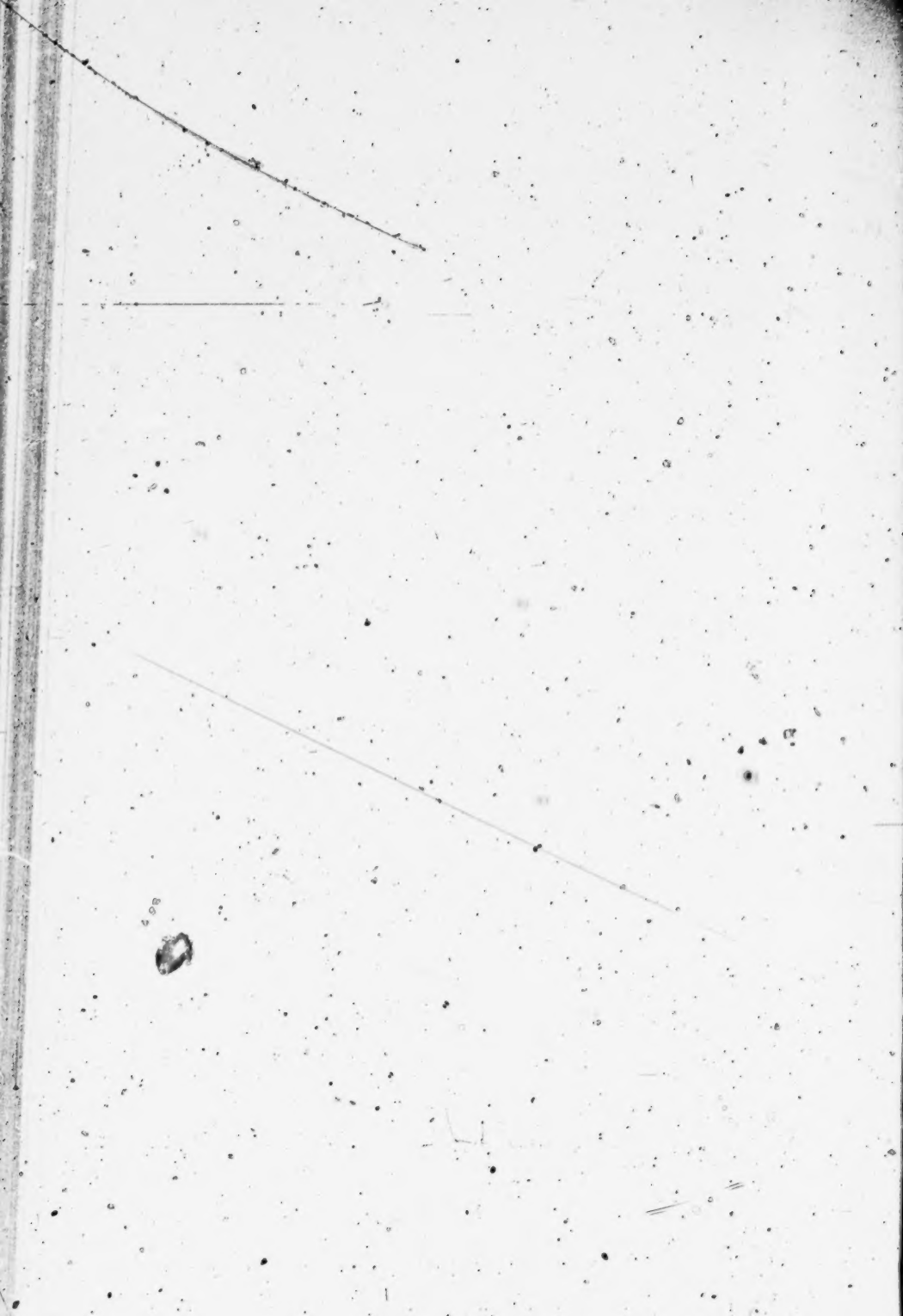

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 25.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, AND THE OTHER PETITIONING LOCAL UNIONS, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, *Petitioners,*

against

NATIONAL LABOR RELATIONS BOARD AND UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONERS, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND ABOVE-NAMED LOCAL UNIONS.

OPINIONS BELOW.

The findings of fact, conclusions of law, and Order of the National Labor Relations Board (R. 65) are reported in 4 N. L. R. B. 10. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 1737) is reported in 95 F. (2) 390.

JURISDICTION.

The jurisdiction of this Honorable Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938 [U. S. C. Tit. 28, Sec. 347 (a)], and Section 10 (e) of the National Labor Relations Act of July 5, 1935, c. 372, Sec. 10, 49 Stat. 453 [U. S. C. Tit. 29, Sec. 160 (e)]. The date of the decision sought to be reviewed is March 14, 1938 (R. 1737), and the date of the judgment is March 21, 1938 (R. 1748). It was entered by the United States Circuit Court of Appeals for the Second Circuit in pursuance of its rulings refusing to set aside a final Order of the National Labor Relations Board of November 10, 1937, and directing that a request of said Board for the enforcement of said Order be granted. The matter came before the United States Circuit Court of Appeals for the Second Circuit pursuant to Section 10 (f) of the National Labor Relations Act, upon the several petitions of the Petitioners herein (R. 1554) and the Consolidated Edison Company of New York, Inc., and its affiliated companies, Brooklyn Edison Company, Inc., et al. (R. 1473), parties aggrieved by, and seeking a review and vacation of, the Order of the National Labor Relations Board of November 10, 1937. By stipulation of counsel for the National Labor Relations Board, Consolidated Edison Company of New York, Inc., et al., and International Brotherhood of Electrical Workers, et al., respectively (R. 1736), confirmed by the Court, the two Petitions for review under Section 10 (f) were consolidated and heard as one case on the calendar of the Circuit Court of Appeals, and the record certified to said Court by the National Labor Relations Board was accepted as

and declared to be the only record required to be certified, printed and filed in the case.

The petition for a writ of certiorari was filed on April 12, 1938, and was granted on May 16, 1938.

QUESTIONS PRESENTED.

(1) Were Petitioners necessary or indispensable parties to proceedings abrogating and annulling their contracts?

(2) Were Petitioners entitled to notice of proceedings which abrogated and annulled their contracts?

(3) Were the alleged notice of hearing and alleged service of the original Complaint of May 12, and the alleged service of the amended notice of hearing of May 25, 1937, *legal and valid notice* in compliance with constitutional requirements of due process of law, and with Section 11 (4) of the National Labor Relations Act and Article V of the Rules of the National Labor Relations Board?

(4) Were Petitioners denied due process of law by Section 1 (f) and (g) of the Order of November 10, 1937, of the National Labor Relations Board, requiring Consolidated Edison and its affiliates to cease and desist from giving effect to their contracts with Petitioners and from recognizing Petitioners as the exclusive representatives of the employes of Consolidated Edison and its affiliates, when no question as to the validity of the contracts, or as to representation for collective bargaining, was raised in the charge of May 5 or the Complaint or any amended Complaint, or at the hearings, and the Board dismissed so much of the Complaint as involved any charges that Consolidated Edison and its affiliates had dominated or interfered with the formation or administration of, or

had contributed financial or other support to, Petitioners, contrary to Section 8 (2) of the Act?

(5) Does the National Labor Relations Act authorize the Board to exercise jurisdiction over these Petitioners in their labor relations with Consolidated Edison and its affiliates, which are local operating public utilities doing business wholly within New York, are not engaged in commerce as defined in the Act, and are subject to plenary regulation by New York under its Public Service Law and its State Labor Relations Act?

(6) Did the Order of November 10, 1937, of the National Labor Relations Board, abrogating and annulling the contracts of Petitioners, exceed the power of the Board and comply with the constitutional requirements of due process of law, the National Labor Relations Act, and with the Rules and Regulations of the Board (a) when hearsay and other illegal testimony was admitted before the Trial Examiner and made the basis of findings of fact by the Board, (b) when the Trial Examiner and the Board refused to hear evidence sought to be introduced by Consolidated Edison at the hearings, (c) when the Trial Examiner made no report or findings as contemplated by Article II, Section 32 of the Rules of the Board, and no opportunty was afforded to file exceptions to his report as contemplated by Section 34, (d) when none of the members of the Board saw or heard any of the witnesses who testified before the Trial Examiner, and (e) when the Board afforded no opportunity to any of the parties in interest affected by its final Order to be heard before the passage of the same, but entered its final Order without any hearing, much less a fair and full hearing "in accordance with the cherished judicial tradition embodying the basic concepts of fair play"?

STATUTES INVOLVED.

This cause involves questions arising under the Constitution of the United States, the Fifth and Tenth Amendments thereto, and parts of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Sup. II, Title 29, Sec. 151, *et seq.*) The pertinent parts of the National Labor Relations Act will be found in Sections 1, 2, (6) and (7), 7, 8 (1), (2) and (3), 9 and 9 (c), 10 (a), (b), (c), (e) and (f), and 11 (4) thereof. There is also involved the construction and operation of the Rules and Regulations of the National Labor Relations Board, Series 1, as amended, particularly Article II, Sections 19, 29, 32, 34 and 37, and Article V. Sections 1 and 2.

Under the decision and Order of the Board and the decision and Order of the Court below, questions are presented as to the valid construction and applicability of the Act and of the Rules of the Board, the regularity and conformance of its proceedings, findings and Order to due process of law, the attempted jurisdiction of the Board, and the sufficiency of the support for its findings and Order.

STATEMENT.

Petitioners herein are the International Brotherhood of Electrical Workers and seven of its Local Unions, all affiliated with the American Federation of Labor. The membership of these Locals numbers something over 30,000 out of 38,000 eligible employes of the Consolidated Edison Company of New York, Inc., and its six affiliated Companies, herein referred to as Consolidated Edison (4 R. 1505).

Contracts were executed in May and June, 1937, between the Brotherhood and its Locals, all of whose members were employes of Consolidated Edison, on the one hand, and the Consolidated Edison and its affiliated Companies, on the other. The contracts were each authorized by a majority of the employes of each of the Edison Companies and of the respective Local Unions which entered into them (4 R. 1504-1505). Reference to the contracts (4 R. 1581) will reveal that they are of the utmost importance with relation to the vital concerns and interests of the workers composing the several Locals in their employment. They contain provisions, among others, for a system of arbitration of disputes relating to employment and stipulate against strikes and lockouts, thus giving practical assurance against any cessation of service by the Companies with which they are made. These contracts were abrogated by the Board's Order of November 10, 1937.

Charges against the Consolidated Edison Company and its affiliates (1 R. 4) were filed with the Board on May 5, 1937, by the United Electrical and Radio Workers of America, herein called the United, an affiliate of the Committee for Industrial Organization. A Complaint (1 R. 7) embodying these charges was issued by the Board May 12, 1937. *Consolidated Edison and its said affiliates were the only parties who were made respondents or defendants in the Complaint and to the proceeding before the Trial Examiner and Board. Neither the Brotherhood nor the Locals were made parties, nor were they brought into the proceedings in any manner whatsoever. The charge of May 5, and the Complaint in its original form, as issued May 12, did not assert or prefer any charge against the Brotherhood or its Locals, nor did*

the Complaint or any of the several amendments to it make any mention of the contracts or attack their validity or raise any question as to representation or election. Moreover, at no time during the hearings before the Trial Examiner was any statement made, by or on behalf of the Board or any of the parties, that the validity of the contracts or any question of representation or election was in issue. Statements were made by the Board's counsel that there was no question of representation involved (1 R. 279). The Complaint was amended June 10 and 14 (1 R. 13, 14 and 15), after the hearings before the Trial Examiner were begun and substantially advanced. *No amendment until that of June 14 affected the Brotherhood or its said Locals under or within the Act.*

No legal notice, either actual or constructive, was at any time given to the Brotherhood or any of the said Locals of either the Charge filed by the United on May 5, the Complaint of May 12 or any of the amendments thereto, or of any action which contemplated the abrogation and annullment of their contracts and the consequent destruction of their property, contractual and personal rights. The methods of giving notice and the service of papers are provided for in the National Labor Relations Act, herein called the Act, in Section 11 (4), as follows:

> "Complaints, orders, and other process and papers of the Board, its member, agent or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof *at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same".*

Article V, Section 1 of the Rules and Regulations of the Board (Series 1, as amended) is the same as the above sub-section, and Section 2 of said article provides:

> "Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. *When service is made by registered mail, the return post office receipt shall be proof of service.* When service is made in any manner provided by such law, proof of service shall be made in accordance with such law."

There is in the Record (18-19) a Western Union Telegraph Messenger Errand Service ticket stating that on May 12, 1937, "3 packages" were sent to "United Elec Radio Workers 1133 Bway; Intl Brotherhood Elec Workers 103E25; Consolidated Edison Co 3 Irving Place". It also has on it: "Lu 3 IBEW D Kaplan". Just what was receipted for by "D Kaplan" does not appear other than the statement in the *ticket* that "3 packages" were sent. Who "D Kaplan" is, or what the position, status or authority of such person was, has never been made apparent. The letters and figure "Lu 3" presumably mean Local Union No. 3. *That is not one of the Local Unions of employes, Petitioners herein, in the service of any of the Consolidated Edison Companies.* Even the true address and place of business of Local Union *No. 3* is not "103E25" but 130 E. 25th Street. None of the Petitioners herein has an office, business, residence or address at either of those places. There is repeated testimony of Harold Straub, the main witness for the complaining C. I. O. Union, which brought the charge on May 5, 1937, and for the Board, that one of the Petitioners herein, Local Union B-829, had its offices in New Yorl

City at 60 East 42nd Street. Mr. Straub testified, in answer to the question of the Board's counsel—"What were those offices?"—"They were and are now the offices of Local B-829 of the International Brotherhood of Electrical Workers. They are located in 60 East 42nd Street in the Lincoln Building, Room 934". (1 R. 256. See also 273, 276, 277.) It will be further noted that the Contract of said petitioning Union, Local No. 829, was entered into by it with the Consolidated Edison Company of New York, Inc., itself (4 R. 1624).

Moreover, the affidavit of Sadie Jacobs, a Board stenographer, as to proof of service of the original Complaint and notice of hearing (1 R. 18) does not mention any service whatever on the International Brotherhood of Electrical Workers or any of its said Locals, nor does it refer to any messenger errand ticket or the sending of any package by such agency. Her affidavit refers exclusively to alleged service *by registered mail*, the numbers of which are specified in the affidavit. *No return receipts* are included, and it is clear that *the receipt numbers for registered mail mentioned in the affidavit relate only to the receipts for mail to the Consolidated Edison affiliate Companies named therein.*

With reference to the amended notice of hearing of the original Complaint (R. 34), sent out on May 25, the affidavit of Alan J. MacAdams (R. 35-36) states that the amended notice was served upon the Consolidated Edison and its affiliates, at their respective addresses, upon Robert H. Coulson, Esq., 40 Wall Street, N. Y. C., and "International Brotherhood of Electrical Workers, 130 East 25 Street, N. Y. C.", by sending to them "at the addresses indicated, by postpaid registered mail, return

receipt requested," the amended notice of hearing of May 25; that he received therefor from the U. S. Post Office, N. Y. receipts for registered articles, dated May 25, 1937, numbered 303160 to 303168, respectively, said receipts being attached as part of the affidavit. The copies of the post office receipts are omitted. *No return receipts are stated in the affidavit to have been received; and no such receipts are included in the Record.* In view of this omission in the Record and in order to ascertain whether or not there were any such return receipts, the Board, after the certified transcript of the Record had been filed by it and had been subjected to particular inspection upon the subject, was requested to search its files to ascertain whether it could find therein *any return receipt* for registered mail sent on or about May 25, 1937, to "International Brotherhood of Electrical Workers, 130 East 25 Street, N. Y. C.", at which place, as aforesaid, neither the Brotherhood nor its petitioning Locals had any residence, office, place of business or habitation. *No such return receipt was discoverable.*

The Complaint, as finally amended, charged that Consolidated Edison had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of the National Labor Relations Act. [July 5, 1935, 49 Stat. 449; 29 U. S. C. Section 158 (1), (2) and (3), and Section 152 (6) and (7).] *There was no allegation of violation of Section 9 (c) of the Act relating to representation or election.* And it was positively declared by the able counsel for the Board, on its behalf, that no such question was involved in the proceedings (1 R. 279).

Pursuant to amended notices to the Respondent Companies, none of which, as aforesaid, were served upon or directed to the International Brotherhood of Electrical Workers or any its said Locals, hearings were held before the Trial Examiner on June 3, 10, 11, 14, 15, 16, 17, 23 and 24 and July 6, 1937. The Brotherhood and its said Locals, not being parties, and not having been served with any legal notice, summons, citation or other process, took no part whatever in the proceedings before the Trial Examiner or the Board.

On June 14, 1937, an important and very radical amendment of the Complaint was made. This consisted of changing the figure "21" to "22" in paragraph "23" and in paragraph "24" of the Complaint. (R. 15).

The intent and effect of said Amendments of June 14, 1937, were to make the Complaint charge that the matters mentioned in paragraph "22" as to the Brotherhood "affected commerce" as defined in the Act, by bringing the allegations of paragraph 22 within paragraphs 23 and 24 of the original Complaint. By those Amendments the matters mentioned in paragraph 22 were brought *for the first time within the purview of the Act and within the jurisdiction of the Board.* The Complaint as thus basically and radically amended was never served upon the Brotherhood or any of said Local Unions, nor was any notice of the Complaint, as thus fundamentally modified, mailed or otherwise sent or delivered to the Brotherhood or any of the petitioning Local Unions.

On September 29, 1937, long after the conclusion of the hearings before the Trial Examiner in New York on July 6, 1937, and without any Intermediate Report upon his part, the Board summarily ordered the

proceedings to be *"transferred and continued"* before it at Washington, D. C., and, on November 10, 1937, announced its decision and order (1 R. 65 *et seq.*). The conclusions of law of the Board embraced findings that Consolidated Edison and its affiliates had violated Section 8 (1) and (3), and that these violations affected commerce within the meaning of Section 2 (6) and (7) of the Act. *The Board specifically found that there had been on violation within the meaning of Section 8 (2) of the Act.* The Order of the Board directed Consolidated Edison and its affiliates, *inter alia, to Cease and Desist from "Giving effect to their contracts with International Brotherhood of Electrical Workers", and "Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees".*

Pursuant to Section 10 (f) of the Act, Petitioners, the Brotherhood and its said Locals, upon learning of the passage of the Board's Order, as well as Consolidated Edison and its affiliates, on November 18, 1937, petitioned the United States Circuit Court of Appeals for the Second Circuit, as persons aggrieved by the final Order of the Board, to review and set aside the Order of November 10, as unconstitutional and void. Answers of the Board and requests for the enforcement of its Order were filed to these respective petitions (4 R. 1691 and 1711) to which replies were filed by the Petitioners (4 R. 1726 and 1734).

By stipulation (4 R. 1736) of counsel for the Board, Consolidated Edison and its subsidiaries, and the Brotherhood and its said Locals, it was agreed that the two said Petitions under Section 10 (f) be consolidated and heard as one case in the Circuit Court of Appeals, and that the record certified by the Board be the only record

required to be certified in the cases as consolidated. This stipulation was approved by the Court below, *per* his Honor, Judge Manton (R. 1737) and the cause proceeded accordingly. The Circuit Court of Appeals denied the two Petitions and ordered the Board's Order to be enforced and executed. Its action, with respect to both said Petitions, is under review herein upon certiorari granted by this Court on May 16, 1938.

SPECIFICATION OF ERRORS TO BE URGED.

(1) The Circuit Court of Appeals erred in finding and holding that Petitioners were not necessary or indispensable parties to the proceedings before the Trial Examiner and the National Labor Relations Board, which resulted in the passage by said Board of its Order abrogating and annulling Petitioners' contracts and destroying their contractual, personal and property rights.

(2) The Court below erred in not finding and holding that Petitioners were entitled to notice of the proceedings before the Trial Examiner and the National Labor Relations Board, which resulted in the passage by said Board of the Order abrogating and annulling Petitioners' contracts and destroying their contractual, personal and property rights.

(3) The Court below erred in not finding and holding that the alleged notice and service of the original Complaint of May 12, and the attempted service of the amended notice of hearing of May 25, 1937, did not comply with constitutional requirements of due process of law, and did not comply with Section 11 (4) of the National Labor Relations Act and Article V of the Rules of the National Labor Relations Board.

(4) The Court below erred in finding and holding that Petitioners were accorded due process of law in the passage of Section 1 (f) and (g) of the Order of November 10, 1937, of the National Labor Relations Board, requiring Consolidated Edison and its affiliates to cease and desist from giving effect to their contracts with Petitioners and from recognizing Petitioners as the exclusive representatives of the employes of Consolidated Edison and its affiliates, when no question as to the validity of the contracts or as to representation for collective bargaining was raised in the charge of May 5, the original Complaint, or the Complaint as amended, or at the hearings, and the Board dismissed so much of the Complaint as involved any charges that Consolidated Edison and its affiliates had dominated or interfered with the formation or administration of, or had contributed financial or other support to, Petitioners, contrary to Section 8 (2) of the Act.

(5) The Court below erred in finding and holding that the National Labor Relations Act authorizes the National Labor Relations Board to exercise jurisdiction over the Petitioners in their labor relations with Consolidated Edison and its affiliates and over the matters complained of to the Board and ruled upon by it, and that the Act, as applied and administered by the Board in this case, complies with the Fifth and Tenth Amendments to the Constitution of the United States.

(6) The Court below erred in finding and holding that the Order of November 10, 1937, of the National Labor Relations Board, abrogating and annulling the contracts of Petitioners, was within the authority and power of the Board, and complied with the constitutional requirements

of due process of law as protected against violation by the Fifth Amendment to the Constitution of the United States, and with the Act and the Rules and Regulations of the Board.

(7) The Court below erred in upholding the Order of November 10, 1937, of the National Labor Relations Board and in sanctioning and affirming the admission before the Trial Examiner of hearsay and other illegal testimony upon which findings of fact were made by the Board, the rulings of the Trial Examiner and the Board refusing to hear important and pertinent evidence offered by Consolidated Edison, the procedure of the Trial Examiner who made no report or findings, and afforded no opportunity to file exceptions to his report as contemplated by Article II, Sections 32 and 34 of the Rules of the Board, the passage of the Order by members of the Board who neither saw nor heard any of the witnesses who testified before the Trial Examiner, whilst the Board afforded no opportunity to either Petitioners or other parties in interest to be heard before the passage of the final Order of November 10, 1937.

SUMMARY OF ARGUMENT.

A. The Petitioners were necessary and indispensable parties to the proceedings before the Trial Examiner and the Board, and were entitled to legal notice thereof, in view of the invalidation of their contracts by the final Order of the Board. The unvarying rule of law, affirmed many times by this Court, requiring joinder and notice, is a fundamental and mandatory one and goes to the very foundation of due process of law and the protection of personal and property rights against unwarranted invasion and destruction. The main theory of the Board

in support of its position that these Petitioners were not entitled to either joinder or notice, namely, that the Order of the Board did not run against these Petitioners, is obviously untenable, because it would seem indisputable that if an order of a court or an administrative body is not based upon *notice* and does not run against *all persons to be injuriously affected* by it, then such order is for that reason alone abortive and without force as against individuals whose personal, property and contractual rights are destroyed or denied by it. If the Board's Order did not run against these Petitioners, by what warrant can it be said to be efficacious to cancel and annul these Petitioners' personal, contractual and property rights, upon which it directly and destructively operates? The Board's reliance, further, upon the *Pennsylvania Greyhound Lines* case to support its present position as to non-joinder of and lack of notice to these Petitioners would seem plainly futile because of the distinct dissimilarity of the two cases. There, the Board argued, and this Court held, that joinder and notice were dispensable because the union was totally company-dominated in thorough-going violation of the express terms of Section 8 (2) of the Act, and that, therefore, notice to the company was in fact notice to the union; whilst here, not only did the Board expressly find that Section 8 (2) of the Act was not violated by Consolidated Edison and its affiliates, but there is, moreover, no suggestion in the evidence that these Petitioners were other than *bona fide*, independent International and Local Labor Organizations, all affiliated with the American Federation of Labor, and comprising more than thirty thousand skilled and high-grade employes, who, to say the least, may be reasonably presumed to be incapable of being dominated and coerced.

The "Intervention" referred to in Section 10 (b) of the Act and Article II, Section 19 of the Board's Rules, is so absolutely discretionary and so partial and limited, that where substantive property and personal rights are involved, it seriously fails to gratify constitutional requirements.

B. Even if legal notice to these Petitioners of the proceedings before the Trial Examiner or before the Board could remedy the defect caused by not having joined them as parties to proceedings which culminated in the destruction of their rights, no legal notice of, or citation to appear to any stage of, the proceeding was ever served or attempted to be served upon them. Neither the provisions of the Act, Section 11 (4), nor of the Rules of the Board, Article V, Sections 1 and 2, referring to process and service, were complied with, nor was there any other effort to furnish these Petitioners with notice or otherwise to comply with the fundamental requirements of due process of law which guarantee notice and the right to be heard before abrogation or condemnation of personal and property rights. Legal service of process, it is argued by the Board, is shown to have been made because of the existence in the record of a telegraph messenger errand service ticket which the Board contends shows that notice of the original complaint of May 12 was left with an individual purporting to have received it on behalf of "Local Union No. 3" of the Brotherhood in New York City; similarly, an amended notice of hearing sent out by the Board to a different address of Local Union No. 3, by registered mail on May 25, is contended to show service on "Local Union No. 3". Disregarding, for the moment, differences in the addresses of "Local Union No. 3" in these two alleged notices, and other manifest de-

fects and omissions in the mode and proof of the two purported services, it is plain that, even if "Local Union No. 3" was served in the manner and to the extent argued by the Board, there was yet no notice to or service upon, either actually or constructively, these Petitioners, because "Local Union No. 3" was not one of the Local Unions whose members were employes of Consolidated Edison or its affiliates, nor was it one of the Local Unions whose contracts were abrogated by the Board. Service on "Local Union No. 3", assuming it to have been made, was not a service on these Petitioners or the International Brotherhood of Electrical Workers. International labor unions are entities, separate and distinct from the members who compose them and from the Local Unions, as much so as a corporation is an entity separate and distinct from its stockholders or from a subordinate organization. No explanation or reason has been advanced by the Board as to why it chose, in its alleged attempts at service, "Local Union No. 3", rather than these Petitioners, or any one of them, as would have been manifestly the proper course of procedure in order to comply with due process of law. The Building and Office of the International Brotherhood in Washington, D. C., must have been well known to the Board, and, indeed, the address of the "principal office or place of business," where service of process is, by Section 11 (4) of the Act, required to be made, of Local Union No. B-829, one of Petitioners, whose members were employes of Consolidated Edison and whose contract was destroyed by the Board's Order, was repeatedly mentioned in the testimony of one of the Board's leading witnesses (Straub) as definitely known at and long prior to the date of the amendments of June 14, to the Complaint. (1 R. 256, 273, 276, 277.)

C. The Order of the Board abrogating the contracts of Petitioners and destroying their personal, contractual and property rights, without their having been made parties to the proceedings and without notice to them of the pendency of proceedings actually or potentially against them, was and is null and void, because the abrogation of the contracts or their validity *vel non* was never an issue in the pleadings or at any stage of the proceedings. The charge of May 5; and the original Complaint of May 12, did not mention or prefer any charge against Petitioners, nor did any of the several amendments make any mention of the contracts or attack their validity or raise any question as to representation or election. Moreover, at no time during the hearings before the Trial Examiner was any statement made by anyone that the validity of the contracts, or any question of representation or election, was in issue but, on the contrary, statements were made during the hearing by the Board's counsel that there was no question of representation involved (1 R. 279). The jurisdiction of the Board was limited to the relief prayed for or sought, and it did not extend to the granting of relief not embraced in or contemplated by the Charge, the Complaint or the amended Complaint. A proceeding brought for one cause of action and an order made for another are basically irreconcilable with common justice and the law of the land, because such a course of action contains no notice to the party affected of the claim against him, or of the proposed action upon it, and no opportunity to be heard in protest or defense against it.

Section 1 (f) and (g) of the Order of the Board abrogating Petitioners' contracts and outlawing the Local Unions as bargaining representatives of the employes,

being neither referable to nor predicated upon the pleadings in the case, was illegal, as a denial of due process of law in its requirements of a reasonably definite charge or claim against a party who may suffer punishment, loss or prejudice by the decision, and of notice of such charge or claim with hearing and opportunity to protect or defend himself.

D. The National Labor Relations Board has no jurisdiction over the Consolidated Edison Company and its affiliates, or over its labor relations with Petitioners, including the contracts which the Board's Order destroyed, because said Companies and their employes are not engaged in commerce as defined in the Act and their labor relationships do not burden such commerce. The activities of the Consolidated Edison Company and its affiliates are intrastate within the meaning of the Commerce Clause of the Constitution of the United States and are, therefore, with regard to labor relations, subject to the jurisdiction of the Labor Relations Board of New York. Because of the intrastate character of the business conducted by the Consolidated Edison Company and its affiliates, the National Labor Relations Act, as applied by the Board in this case, conflicts with the Tenth Amendment to the Constitution of the United States. The National Board is without jurisdiction over the labor relations of Consolidated Edison and its affiliates because there is no clear justification of the exercise of the federal power. Consolidated Edison and its affiliates, being domestic corporations of New York, carrying on intrastate business, are not, in their labor relations, subject to jurisdiction of the National Board, but to jurisdiction of the State Board because federal is relinquished to state power where its exercise involves control of or interference with the internal affairs of such a corporation.

E. The Order of the Board annulling Petitioners' contracts exceeded the power of the Board, and the proceedings leading to the Order did not comply with the Act or the Board's Rules, and constituted a denial of a fair and full hearing and of due process of law, in contravention of the Fifth Amendment to the Constitution of the United States.

F. By the Board's Order destroying Petitioners' contracts the basic principles of evidence and procedure essential to the requirements of a full and fair hearing and to due process of law were violated, in that gross and remote hearsay and other illegal evidence was, over objection of counsel for Consolidated Edison, admitted and made the basis in great part of said Order; competent evidence was rejected; the testimony of important witnesses in behalf of Consolidated Edison, although these witnesses were present in the hearing room, was not allowed to be presented; the Trial Examiner made no intermediate report or findings as contemplated by its Rule, Section 32, Article II; the findings were made only by Board members, who had heard none of the evidence, whilst the Board did not afford Consolidated Edison any hearing before it, as required by Sections 29 and 37 of Article II of the Board's Rules, although such a hearing had been requested by counsel for Consolidated Edison (1 R. 19, 20, 21, 39), and the latter were given no opportunity for oral argument or for the submission of a brief to the Board, they having submitted a brief only to the Trial Examiner, in aid of his preparation of findings, which he never made. In view of the non-joinder in the proceedings of these Petitioners, and the failure of legal notice to them of the existence or pendency of the same, and also because of

the total lack of any issue touching the validity of their contracts which the Board's Order destroyed, the many and serious aberrations by the Board from traditional and requisite procedure have resulted in such grave detriment and injury to Petitioners as to call for the reversal of the judgment of the Circuit Court of Appeals for the Second Circuit.

ARGUMENT.

I.

Petitioners were indispensable parties to the proceedings before the Trial Examiner and the Board, and were entitled to legal Notice thereof, in view of the invalidation of their contracts by the Board's final Order. But the Petitioners did not receive legal Notice of the proceedings, nor were they made Parties to the Proceedings, or notified or cited as Parties interested therein.

The case relied on by the Court below in denying Petitioners' contention that it was a necessary party, namely, *National Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261, presented an entirely different factual and legal situation from the instant case. There the Employees' Association was not, as here, a *bona fide,* independent and fully recognized labor organization, but was found to be wholly a company-dominated union in violation of Section 8 (2) of the Act (violation of this Section was dismissed here), and the control of the management so permeated every aspect of the Association's operations, as argued by the Government there (See Board's petition for writ of certiorari in *Pennsylvania Greyhound* case, No. 413, October Term, 1937, p. 17), that "*the Association and the management cannot be regarded as separate entities.* * * * *Notice to respondents* (management) *was*

thus in any event notice to the Association." And further:

> "Nor is the argument that 'the union enjoined has not been notified or heard, entitled to any weight. * * * *If it were true that Employees Association was 'enjoined' by the Board's order it will be readily conceded that the Association would have been an indispensable party and should have been joined.* But the Board's order is not addressed to the Employees Association, *it imposes no obligation upon the Association, and the Association is not bound by it in any way. The order is directed solely against respondents and restrains their conduct only.*"

And the Board as a further reason for its position pointed out that the Association there, after the Board's decision was made public, *did not petition for review under 10 (f)*, as was immediately done by the Petitioners here.

It is thus evident that there is no fair or substantial parallel between the *Greyhound* and the instant case. There the question was merely as to the disestablishment of a company-dominated union; here solemn agreements providing for a system of arbitration of disputes relating to employment and stipulating against strikes and lockouts were struck down. There the Government's position was that the management and the Association were one; here the facts and the *finding of the Board* are the reverse of that proposition. There was no application by the Association for review under 10 (f) there; while here Petitioners applied for review immediately upon publication of the Board's Order. There the Government conceded that if the Association was *enjoined* by the order, or if the order had imposed obligations on or bound

the Association, it would have been an indispensable party. Here, Petitioners are, in plain effect, affirmatively *enjoined* from exercising contractual rights, and of this there can be no dispute, although the Order runs only to Consolidated Edison and its affiliates, because the only possible and inevitable result of the Order is to dissolve Petitioners' contractual obligations which would otherwise be binding and in full force and effect.

General Inv. Co. v. *Lake Shore, etc., R. Co.*, 260 U. S. 261, 285-286, cited by this Court in the *Greyhound* case as authority for the ruling that the Association was not an indispensable party, may well be cited as authority for Petitioners' position upon that subject in the case at bar. That case involved a suit by a shareholder to prevent two corporations from carrying out an agreement for a consolidation, *where the agreement had not yet been ratified or executed;* but this Court held that as to certain allegations of the bill which affected *joint rights* both parties were indispensable parties, saying (285):

> "As to so much of the bill as sought to enjoin the New York Central Company from voting its shares in the Lake Shore Company and to enjoin the latter from permitting it to vote them, *we think it is obvious that the New York Central Company was an indispensable party, and that with it neither appearing nor reached by any effective process no other course was open than to dismiss that part of the bill. Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 235, 246; *Taylor & Co.* v. *Southern Pacific Co.*, 122 Fed. 147, 152, 154."

All persons having a substantial interest of property or liberty in the subject matter or object of a proceeding are indispensable parties to it. The Order of November

10, 1937, destroyed property, personal and contract rights of inestimable value to, and inflicted irremediable injury upon, the Petitioners herein. *Nevertheless, they were neither named nor brought in as parties to the proceedings, and were not before the Board, actually or constructively, when it ordered the destruction of their rights.* Therefore, it is respectfully submitted, the omission of these Petitioners as indispensable parties to this proceeding renders the whole proceeding, and particularly the Order of the Board, so far as it prejudiced these Petitioners in the grave aspects of which they complain, unconstitutional and void.

Mallow v. *Hinde*, 12 Wheat. 193, 6 L. ed. 599.
Barney v. *Baltimore*, 6 Wall. 280, 18 L. ed. 825.
Russell v. *Clark*, 7 Cranch 69.
Shields v. *Barrow*, 17 How. 130, 15 L. ed. 158.
Gregory v. *Stetson*, 133 U. S. 579, 33 L. ed. 792.
Swan Land, etc. Co. v. *Frank*, 148 U. S. 603, 37 L. ed. 577.
Nashville, etc. R. Co. v. *Orr*, 18 Wall. 471, 21 L. ed. 810.
Ribon v. *Chicago, etc. R. Co.*, 16 Wall. 446, 21 L. ed. 367.
Minnesota v. *Northern Securities Co.*, 184 U. S. 199, 235, 46 L. ed. 499.
Garzat v. *DeRubio*, 209 U. S. 283, 52 L. ed. 794.
Lee v. *Lehigh Valley Co.*, 267 U. S. 542, 69 L. ed. 782.
Commonwealth Trust Co. v. *Smith*, 266 U. S. 152, 69 L. ed. 219.
Niles-Belmont-Pond Co. v. *Iron Moulders Union*, 254 U. S. 77, 65 L. ed. 145.
Gen'l Inv. Co. v. *Lake Shore, etc. R. Co.*, 260 U. S. 285.

In *Employers Reinsurance Corp.* v. *Bryant*, 299 U. S. 374, 381, 81 L. ed. 289, 293, this Court said:

> "It is conceded, and rightly so, that the district court was without personal jurisdiction of the defendant, and that in the absence of such jurisdiction the court was without power to proceed to an adjudication. * * * In this instance the dispute or controversy was not properly within the jurisdiction of the district court unless * * * (3) the defendant was before the court by reason of a general appearance or *a valid service of process. Each of these elements of jurisdiction was essential, and if any was wanting there was an absence of proper jurisdiction. The defendant was not before the court, and therefore it was without jurisdiction to proceed with the suit.* Counsel for the petitioner assume that the presence of the defendant was not an element of the court's jurisdiction as a federal court; but the assumption is a mistaken one. *By repeated decisions in this Court it has been adjudged that the presence of the defendant in a suit in personam, such as the one now under discussion; is an essential element of the jurisdiction of a district (formerly circuit) court as a federal court, and that in the absence of this element the court is powerless to proceed to an adjudication.*"

The Board now contends that the Petitioners were protected under the Act by the provision for intervention contained in Section 10 (b), and by the right to challenge the Board's Order pursuant to Section 10 (f) thereof. It is respectfully submitted that this contention of the Board in no regard answers the Petitioner's claim on this point, because the "Intervention" referred to in Section 10 (b) of the Act and Article II, Section 19, of the Rules of the Board is so absolutely discretionary and so partial and limited, that, where substantive property and personal rights are involved, it

seriously fails to gratify constitutional requirements. Moreover, in the proceeding herein involved, three days of the hearing had elapsed and fundamental testimony had been introduced before the Trial Examiner prior to the amendment to the Complaint of June 14, affecting the Petitioners within the Act.

Section 10 (b) of the Act provides:

> "* * * *In the discretion* of the member, agent or agency conducting the hearing or the Board, any other person may be *allowed* to intervene in the said proceeding and *to present testimony.* * * *"*

Article II, Section 19, of the Board's Rules and Regulations provides:

> "* * * *The Regional Director shall rule upon all such motions filed prior to the hearings;* and the Trial Examiner *shall rule upon all such motions filed at the hearing,* in the manner set forth in Section 15 of this Article. The Regional Director or the Trial Examiner, as the case may be, *may* by order *permit* intervention in person or by counsel *to such extent and upon such terms as he may deem just.* * * *"*

These provisions do not *secure a right* to intervene to any person. The Act itself, Section 10 (b), leaves the matter absolutely *"in the discretion"* of the member, agent or agency conducting the hearing, or the Board. Moreover, the text of the Act is that any other person than the party respondent against whom the complaint is issued *"may be allowed"* to intervene, but unquestionably, is not given the *right* to intervene. Furthermore, if intervention in said *"discretion"* be *"allowed"*, it is limited by the Act to the sole privilege *"to present testimony"*. Nothing further or beyond that to secure the "full hearing", required by due process of law, as amply shown by

the authorities cited herein, is provided. This falls far short of the rights guaranteed by the Constitution of the United States under the Fifth Amendment.

The Rule of the Board above quoted from Article II, Section 19, cannot, and does not, enlarge the said limited provisions of Section 10 (b) of the Act. If anything, it narrows it by the provision that the Regional Director shall "rule" upon all applications to intervene prior to the hearing, and the Trial Examiner shall "rule" upon all filed at the hearing; and that the Director or the Examiner, as the case may be, *may*, by order *"permit"* intervention *"to such extent and upon such terms as he shall deem just."* This substitutes *personal discretion* of the Director or the Examiner for the *security* afforded by *definite provisions* of law. The *law* does not *secure* the *right* to intervene, but the *discretion* of the Director or Examiner *may grant or deny* it, and, if granted, *fix its extent and terms*, as a matter of fortuity, favor or grace.

Illustration is afforded by the fact that on June 10, 1937, before the hearing was begun, the Trial Examiner *denied* two petitions of two separate labor organizations to intervene (R. 134-141; 163-164).

It would be superfluous to argue that, where substantive rights of property or persons are involved, the discretionary and limited provisions of both the Act and of the Rule fail to secure or protect rights guaranteed by the fundamental law. Any *notice* of a complaint to any person, other than a party respondent against whom the complaint is issued, is constitutionally ineffective and worthless; and the process, citation or notice, required by due process of law, are all unconstitutionally wanting.

Moreover, in the proceeding before the Trial Examiner, three full-day hearings were had, and foundational

testimony of the Board's leading witnesses had been taken, before the Complaint was so amended as, for the first time, to embrace any allegation concerning the Petitioners within the Act.

In 21 Corpus Juris, Equity, Sec. 277, page 282, it is said:

> "All the parties to a contract are ordinarily indispensable parties to a bill in equity for its enforcement, *or for its rescission and cancellation,* or reformation, or to enjoin its performance *or its breach,* particularly where they have joint or common rights or liabilities. The rescission of an agreement requires the presence of all claiming property through such agreement."

It is further said in 21 Corpus Juris, Equity, Sec. 276, page 273, in reference to indispensable parties:

> "This class includes all persons who have an interest in the controversy of such a nature that a final decree cannot be made without either affecting their interests or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. Accordingly, persons whose interests will necessarily be affected by any decree that can be rendered are necessary and indispensable parties, and the Court will not proceed to a decree without them."

Continuing, the said section of Corpus Juris, at page 277, further says:

> "The principle underlying the rule as to indispensable parties is fundamental and underlies the administration of justice in all courts of equity. It is that no proceedings shall take place with respect to the rights of any one, except in his presence. The rule as to indispensable parties is neither technical nor one of convenience, but is of imperative obligation."

In 1 Foster, Fed. Pr. (6th ed.), Section 120, page 724, it is said:

> "*Parties indispensable to a decree.* No suit, however, can proceed unless the court have before it as parties all persons who will be directly affected by the decree sought, or whose obedience is necessary to its enforcement, when it does not appear that they consent thereto. A person is affected by a decree when its rights against, or liability to, any of the parties to the suit is thereby determined. * * *
>
> "Every party to a contract, whether of sale or for another purpose, except one who has released or assigned his interest * * * is a necessary party to a suit to enforce it; or to set it aside."

See also section 110, pp. 677-678; section 120, pp. 726-727.

II.

Neither the attempted service upon Petitioners of the notice of May 12, nor that of the amended notice of May 25, 1937, was a valid service of notice or process, or compliance with Section 11 (4) of the Act, or Article V of the Board's Rules, or with the constitutional requirements of due process of law. And after the Amendments of June 14, 1937, by which Amendments these Petitioners were, for the first time, made the subject of charges in the Complaint within the National Labor Relations Act, there was absolutely no pretense of an attempt in any form to give Notice to these Petitioners, or any of them, of any charge in the Complaint against them.

The provision of the Act, Section 11 (4), (*ante*, p. 7) referring to process and service, whether by mail, telegraph or personally, specifies that it must be made at "the principal office or place of business of the person

required to be served," and Article V, Section 1 of the Board's Rules is to the same effect. Neither of the two attempts at service here was directed to the principal office or place of business of either the Brotherhood or any of its said Local Unions, but each time there was an attempt to serve Local Union No. 3 of the International Brotherhood of Electrical Workers, 103 or 130 East 25 Street, N. Y. C., none of the members of which are employes of Consolidated Edison or its affiliates, and which is not one of the Local Unions whose contracts were destroyed. As to proof of service, the Act, Section 11 (4) provides that the "*verified* return of the *individual so serving the same setting forth the manner of such service shall be proof of the same,* and the *return post office receipt* or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid *shall be proof of service of the same.*" The purported service of May 12, 1937, was apparently attempted to be made by telegraph errand service but, as set forth in the Statement hereinabove, the receipt for the same (R. 18-19) is woefully deficient in showing anything that can be regarded as a valid service of notice or process on the Brotherhood or its said Locals. On the contrary, it shows, if anything, that "packages" were left with an individual who may or may not have been connected with a local union which was not one of the Local Unions of employes of Consolidated Edison or any of its affiliates, nor a union whose contract was nullified by the Board's Order. Moreover, the affidavit (1 R. 17-18) wholly omits any reference to the telegraph errand service ticket. This receipt, in the light of the authorities hereinafter cited, wholly fails to show a valid or effective service of the Complaint and notice of hearing of May 12 upon these Petitioners.

Similarly, the affidavit of the clerk—stenographer (1 R. 35-36) fails to show a valid or effective service of the amended notice of hearing of May 25 upon the Brotherhood or the Local Unions of employes in the Consolidated Edison System, but shows that the notice was sent to "International Brotherhood of Electrical Workers, 130 East 25 Street, N. Y. C.", which is not, as aforesaid, one of the Local Unions whose contracts were destroyed or whose members are employed in the Consolidated Edison System. The *return receipts* are omitted from the record, *no "return receipts" are stated in the affidavit to have been received, and no such receipts are included in the transcript.* Moreover, search by the Board among its files failed to disclose any return receipt from "International Brotherhood of Electrical Workers" which has not and never had any residence, office, or place of business at "130 East 25 Street, N. Y. C." No effort was ever made to serve the Brotherhood, whose office in Washington, D. C., is well known, or any of the Local Unions whose contracts were destroyed. The Record, testimony of Mr. Straub, shows that the office of Local Union B-829 of 60 East 42nd Street in New York City was definitely known and there could not have been any difficulty in locating the offices of the other petitioning Local Unions in New York City, or sending the required notice by personal service or by registered mail to the offices of the International Brotherhood, which occupies a large building, known as the I. B. E. W. Building at 1200 Fifteenth Street, Northwest, Washington, D. C. That there was no proper or valid service is affirmatively manifest.

The general principle here directly applicable is well settled and familiar, that where a special administrative board or tribunal is clothed with jurisdiction for particu-

lar purposes, such jurisdiction, in cases in which its exercise is attempted, must be affirmatively shown by the proceedings themselves to have been acquired. Such special jurisdictoin is never presumed, but must positively appear to support judgments or decisions purporting to be within it. And, as is well known, this rule applies especially to administrative boards and tribunals of the Federal Government.

The proposition last stated is found in innumerable judicial devisions, of which perhaps none states it more distinctly than Mr. Justice Field for this Court in *Galpin* v. *Page*, 18 Wall. 350, 21 L. Ed. 959.

In *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413, 35 S. Ct. 625, 59 L. ed. 1027, this Court condemned a statute as embodying provisions repugnant to due process with respect to *lawful and valid notice*. The principles there discussed and applied in the elaborate Opinion of this Court are cogently applicable to the facts at bar. In the course of its exposition of the various aspects of the subject, this Court said:

> *"Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires.* In *Stuart* v. *Palmer*, 74 N. Y. 183, 188, * * * the Court said: *'It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard.' The soundness of this doctrine has repeatedly been recognized by this Court."*

See also:

> *U. S. ex rel Turner* v. *Fisher*, 222 U. S. 204, 56 L. ed. 165.

In *Galpin* v. *Page*, 18 Wall. 350, 21 L. ed. 959, above, Mr. Justice Field emphatically said:

> "It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, *until he has been duly cited to appear*, and has been afforded an opportunity to be heard. Judgment without *such citation* and *opportunity* wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered."

In *1 Foster Fed. Pr.* (6th ed.) Sec. 167 A, p. 972, it is said:

> "A statement that service has been made upon the defendant's agent does not authorize the presumption that such agent had the right to receive service of process."
>
> *Boultbee* v. *International Paper Co.*, 229 Fed. 951.

The "*process*" required to be made or served upon individuals, whose *property or personal rights are to be disposed of* by the adjudication of a cause, must bring or summon such individuals into the cause and require their actual or constructive presence before the Court.

> *Employers, etc. Corp.* v. *Bryant*, 299 U. S. 374; 81 L. Ed. 289.

That service on Local Union No. 3 was, in law, *not* a service on any of the petitioning Local Unions herein, or the International Brotherhood of Electrical Workers, all of whom are profoundly interested in the matters which the Board dealt with as within the Complaint and determinable thereupon, has been often judicially declared.

> *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 60 L. Ed. 975.

In *Dean* v. *International Longshoremen's Ass'n, et al.*, (Dist. Ct. La.), 17 Fed. Supp. 748, directly in point, the Court said:

> "As was pointed out by the Supreme Court in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 345, 42 S. Ct. 570, 66 L. ed. 975, these *international labor unions* are entities, separate and distinct from the members who compose them and from the *local organizations*. It is true that case did not involve a question of citation or jurisdiction, but, if it be true, as must be conceded, that they have rights as juridical personages distinct from the members or locals who compose them, then it necessarily follows that they cannot be brought into Court by service merely upon a member, but must be cited through someone having authority either expressed or necessarily implied from his relation to the association or the duties which he discharges. Mayo has not been shown to possess any such authority. * * *. See *Christian* v. *Inter. Ass'n of Machinists*, 7 F. (2d) 481; *Singleton* v. *Order of Ry. Conductors*, 9 F. Supp. 417."

In *Christian* v. *International Ass'n of Machinists, et al.* (D. C. Ky.), 7 Fed. (2) 481, also directly in point, the Court said:

> "*So, also, it must be held that the chairman or any other officer of a local union is not a representative of the International Union for service of process.* There is no more reason for holding that he is than that a mere member of such union is. As to some of the defendants the individual on whom process was served sustained no official relation to a local union. It would have made no difference if he did. * * * It should be noted that in the *Coronado* Case, the Supreme Court, through Chief Justice Taft, said: 'For these reasons, we conclude that the International Union, the District No. 21, and the

27 local unions were properly made parties defendant here, and properly served by process *on their principal officers.'*

"• • • It is not to be blinked at that these unions, International and local, artificial units and entities, and suable as such, cannot be brought before the Court, save by service of process on a direct representative, whose relation thereto is such that it is reasonable to infer that the service of such process on him will be brought home to the union which he represents. They are entities, distinct and separate from their membership and subordinates, as much so as a corporation is an entity distinct from its stockholders or subordinate organiation."

In 63 *Corpus Juris,* Trade Unions, Sec. 94, p. 705, it is said:

"On the other hand, service of process on an officer of a local union and a member of a general union is insufficient to give the court jurisdiction of the latter."

See also:

Coronada Coal Co. v. *United Mine Workers,* 268 U. S. 295, 45 S. Ct. 551, 69 L. ed. 963.

United Brotherhood of C. & J. v. *McMurtery,* 179 Okla. 575, 66 Pac. (2) 1051.

Singleton, et al., v. *Order of Ry. Conductors of America, (D. C. Ill.),* 9 Fed. Supp. 417.

United Mine Workers v. *Pennsylvania Mining Co.* (C. C. A. 8), 300 Fed. 695.

Pennsylvania Mining Co. v. *United Mine Workers,* (C. C. A. 8), 28 F. (2nd) 851.

III.

Petitioners were denied due process of law by Section 1 (f) and (g) of the Board's Order, abrogating their contracts and directing non-recognition of the Brotherhood as representatives of the employes, when neither the validity of the contracts, nor representation, was in issue, or embraced, in the Charge, the Complaint or Amended Complaint, or raised at the hearings or at any other time before the Board's final Order, and the Board itself dismissed so much of the Complaint as involved company domination or support contrary to Section 8 (2) of the Act.

Even if notice of the original Complaint and hearing upon it had been served upon Petitioners prior to the amendments of June 14, 1937, the Complaint did not contain or make any charge of unfair labor practices or of any offense affecting commerce and within the Act against Petitioners, and, therefore, did not give them any information or notice of any such charge. The Complaint, moreover, made no reference whatever to the contracts or to representation for collective bargaining dealt with by the Board's Order.

The precise point here presented was adjudicated in *Morgan* v. *United States*, 304 U. S. 1, in which this Court said:

> "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to *know* the claims of the opposing party and to *meet* them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. *Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly*

advised of what the Government proposes and to be heard upon its proposals before it issues its final command."

This point was also adjudicated in the recent decision of this Court in *U. S.* v. *Seminole Nation*, 299 U. S. 417, 421-422, 81 L. ed. 316, 318-319. The Opinion of the Court by Mr. Justice Butler, collating the Supreme Court decisions on the subject, discusses it as follows:

> "The jurisdiction of the lower court was limited to claims sued on before the expiration of the period within which the United States consented to be sued. *It did not extend to any cause of action which was not alleged in plaintiff's original petition. * * * The judgment may not be sustained as to any item that is not included in a cause of action set up in the original petition or that was by the findings of the lower court or otherwise put upon a ground not there alleged. Harrison* v. *Nixon*, 9 Pet. 483, 503, 9 L. ed. 201, 208; *Boone* v. *Chiles*, 10 Pet. 177, 209, 9 L. ed. 388, 399; *Garland* v. *Davis*, 4 How. 131, 148, 11 L. ed. 907, 915. *It may not be upheld as to any item that is not supported by definite findings of fact extending to all essential issues and which, unaided by statements in the court's conclusions of law or its opinion, are clearly sufficient to entitle plaintiff to recover. United States* v. *Esnault-Pelterie*, 299 U. S. 201, 205, ante, 123, 57 S. Ct. 159."

See also:

Windsor v. *McVeigh*, 93 U. S. 274, 23 L. ed. 914.

Arredondo v. *Arredondo*, 223 U. S. 376, 56 L. ed. 476.

New Orleans v. *Citizens Bank*, 167 U. S. 371.

Washington, A. & G. R. Co. v. *Washington*, 10 Wall. 299.

Due process of law guaranteed by the Constitution requires definite information and notice to the person whose rights are to be affected by any proceeding in a court or before an administrative board or tribunal, of the claim or complaint against him, as well as of the order or judgment sought. The notice must be such that the person to be affected by the proceeding may be advised from it of the charge or claim against him, and of the relief sought from the court or other tribunal wherein the charge, claim and application for the relief are preferred. Judicial decrees or judgments, or administrative adjudications and orders, affecting the liberties or property of citizens, in the absence of such notice to the party to be affected, violate the fundamental principles of our law and cannot be sustained. It is an axiom not only of constitutional law, but of pleading and practice, that one may not bring a suit or proceeding for one cause of action and recover a judgment for another, much less recover an order or judgment taking away property, or of conviction for offense, without notice of the claim or charge upon which the order or judgment is founded. The decisions to that effect are virtually without number.

These principles are vigorously asserted, and the authorities sustaining them collated, in *In re Rosser*, 101 Fed, 562, (C. C. A. 8th, per Circuit Judge Sanborn) a leading and frequently followed case on this subject, to which this Honorable Court is particularly referred upon the point here under consideration.

After reviewing the authorities and the proceedings leading up to the final order, Judge Sanborn said (568):

> "Such a proceeding *lacks every element* of due process of law. It contains *no notice* to the party

The decision in the *Santa Cruz Fruit Packing Co.* case, decided by this Court March 28, 1938, two weeks after the decision and a week after the judgment rendered herein by the Circuit Court of Appeals, does not dispose of the question of jurisdiction as herein presented, inasmuch as in that case about 37 per cent of the total output of the employer was shipped in interstate or foreign commerce, wherein *"there was a constant stream of loading and shipping of products."* Moreover an *actual strike* had been in progress, with a *cessation* of the flow of extensive commerce. Furthermore there was no question at all raised or presented as to the adequacy of State regulation, there being no State regulation of the business of the employer or of its labor relations with its employes. The Consolidated Edison System, conducting definitely an intrastate business, sells only to persons within the State of New York, a few of whom themselves apply the utility produced and sold to them in New York in interstate commerce. A relatively small amount, not comparable in percentage of the whole to the 37 per cent in the *Santa-Cruz Company* case, finds its way not from the Consolidated Edison System, but only indirectly and remotely through a few of its customers in New York City and State, into interstate commerce. The wholly intrastate public utilities of the Consolidated Edison and its affiliates are subject to plenary State regulation, comprehending every feature of production, distribution and service, and particularly including its labor relations with the Petitioners, under the State Labor Relations Act. There has never been any finding or suggestion that the State Labor Relations Act and State Board have been or are in any way inadequate to prevent conditions which might prejudice either intrastate or interstate commerce. It is respectfully submitted that the facts and conditions dis-

closed by the Record in this case contravene the existence of "such a *close and substantial* relation to interstate commerce that their control is *essential or appropriate* to protect that commerce from burdens and obstructions". As declared by this Court in its recent decisions, the federal power "*must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them * * * would effectually obliterate the distinctions between what is national and what is local and create a completely centralized government. The question is necessarily one of degree*" (*Jones & Laughlin case*, at p 37).

The principle involved is that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear (*Florida* v. *United States*, 282 U. S. 194, 211); and that the federal should be relinquished to the state power, where its exercise would involve control of or interference with the internal affairs of a domestic corporation of the State (*Pennsylvania* v. *Williams*, 294 U. S. 176, 185, *Hopkins Savings Assn.* v. *Cleary*, 296 U. S. 315).

V.

The Order of the Board annulling Petitioners' contracts exceeded the power of the Board, and the proceedings leading to the Order did not comply with the Act or the Board's Rules, and constituted a denial of a fair and full hearing and of due process of law, in contravention of the Fifth Amendment.

An administrative board of the Federal Government has only the powers conferred upon it by law. When

created by Act of Congress or lawful executive order, its powers must be found in the act or order. When such powers are not expressly conferred, they may exist only by clear and manifest intendment from express grants. Power over and affecting the *life, liberty, property and security of the citizen* may not be taken by inference, but only when the statute under which it is claimed demonstrates a plain intent to grant it.

In *Interstate Comm. Comm.* v. *Cincinnati etc. R. Co.*, 167 U. S. 479, 494-495, 505, 509, 42 L. ed. 243, Mr. Justice Brewer, speaking for this Court with reference to the power to fix rates, said:

> "That Congress has transferred such a power to any administrative body is not to be *presumed or implied from any doubtful and uncertain language. The words and phrases efficacious to make such a delegation of power are well understood and have been frequently used, and if Congress had intended to grant such a power to the Interstate Commerce Commission it cannot be doubted that it would have used language open to no misconstruction, but clear and direct.*"

2 Lewis' Sutherland on Statutory Construction, sec. 627, pp. 1136-1137; sec. 630, p. 1140; sec. 569, p. 1053; sec. 572, pp. 1056-1057; sec. 573, pp. 1058-1060; sec. 562, p. 1046; sec. 564, p. 1048; sec. 565, pp. 1048-1049; sec. 546, p. 1019; sec. 493; pp. 921-922; sec. 499, p. 931; secs. 520-525, pp. 963-974; sec. 720, pp. 1310-1311.

Potter's Dwarris on Statutes, 224.
59 C. J., pp. 1127-1128.

There can be no intent of a statute not embraced in its words, and a legislative intention not expressed in some appropriate manner has no legal existence.

Dewey v. *U. S.*, 178 U. S. 510, 44 L. ed. 1170.
Lee Bros. v. *Cran*, 63 Conn. 433.
Union Life Ins. Co. v. *Champlin*, 116 Fed. 858 (C. C. A.).

The *"policy of the government"* in reference to any particular subject of legislation is too *"uncertain"* and *"a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes."*

Dewey v. *U. S.*, 178 U. S. 521, 44 L. ed. 1174.
Haddon v. *Collector*, 5 Wallace, 111, 18 L. ed. 519.

"The construction must be liberal in favor of private right, and construction which implies an intention to deny valuable rights should be avoided; statutes are presumed to be passed in full recognition of the constitutional rights of the citizen."

Frazier v. *Leas*, 127 Md. 575.

The Act specifically enumerates the powers and describes the duties of the Board. It is surely to be presumed that every power of considerable importance and extent is *expressed* in the Act. The only power, having any inherent and substantial relation to the abrogation of contracts, is the power given to the Board to investigate and ascertain the facts in the matter of *representation* of groups or units of employes for *collective bargaining* with their employers. That power is given and defined by Section 9 of the Act. It is a power of investigation. And, in order to render such an investigation effective, to order an election, by the group or unit of employes in question, of a representative or representatives for the designated purpose. Such election is to be determined by a

majority of the employes voting. It may be held under the direction of the Board, whose officers or agents ascertain the results and report them to the Board, which in turn certifies the result to the employer and employes concerned.

Under the Fifth Amendment, Congress cannot constitutionally deprive citizens of their property without due process of law by impairing the obligation of a contract.

Hepburn v. *Griswold,* 8 Wallace, 623-624.
Carter v. *Carter Coal Co.,* 298 U. S. 310-311, headnotes 24, 25, 80 L. ed. 1188-1189.
Schechter Poultry Corp. v. *U. S.,* 295 U. S. at p. 537, 79 L. ed. 1584.
Eubank v. *Richmond,* 226 U. S. 137, 57 L. ed. 156.
Washington ex rel. Seattle Trust Co. v. *Roberge,* 278 U. S. 116, 121-122, 73 L. ed. 210, 213-214.
Hitchman Coal, etc. Co. v. *Mitchell,* 245 U. S. 251-252.
Lamb v. *Chaney & Son,* 227 N. Y. 418.

In *Hepburn* v. *Griswold, supra,* it was laid down by Mr. Chief Justice Chase that the spirit of the prohibition against impairing the obligation of contracts pervades the entire body of legislation by the Federal Government and that an act of Congress whose direct prohibition impairs the obligation of contracts is inconsistent with the spirit of the Constituton. The Chief Justice found support for this view in the Fifth Amendment to the Federal Constitution, declaring that private property shall not be taken for public use, without compensation, and particularly that the provision of that Amendment that "no person shall be deprived of life, liberty or property, without due process of law" must be construed "as a direct prohibition of legislation" impairing the obligations of

contracts. And the Chief Justice added: "It is not doubted that all the provisions of this Amendment operate directly in limitation and restraint of the legislative powers conferred by the Constitution."

See also Sutherland, Notes on United States Constitution, pages 641-643; 646-649.

12 C. J., Constitutional Law, sec. 956, pp. 1190-1192; sec. 958, pp. 1192-1194; sec. 961, pp. 1195-1196.

2 Cooley Const. Lims. (8th Ed.), p. 824.

Meyer v. *Nebraska*, 262 U. S. 390, 67 L. ed. 1042.

Lochner v. *New York*, 198 U. S. 45, 49 L. ed. 937.

In *Willoughby on the U. S. Constitution* (2nd ed.), sect. 1196-1800, *et seq.*, it is said:

> "No *specific* inhibition is laid upon the Federal Government by the Constitution with reference to the impairment of the obligation of contracts. *The Government is, however, forbidden by the Fifth Amendment to deprive persons of property without due process of law and without just compensation. In so far, then, as contract rights may be treated as property, they are protected from direct impairment by federal action.* This was definitely declared in the first legal tender decision of *Hepburn* v. *Griswold*, 8 Wall. 603."

There is nothing inconsistent with the above well-settled and salutary principles in the *Mackay Case*, 304 U. S. ——— or in the *Jones and Laughlin Steel Corporation* Case, 301 U. S. 1, 48, *et seq.* Both of those cases had to do with the reinstatement of employes discharged in violation of the National Labor Relations Act, and it was with reference to forbidden discriminations in cases of individual employments that this Court said, in the *Mackay*

Radio and Telegraph Company Case, that in the exercise of the commerce power, Congress may impose upon contractual relations reasonable regulations calculated to protect commerce against threatened industrial strife. *N. L. R. B.* v. *Jones and Laughlin Steel Corporation*, 301 U. S. 1, 48. The Board's order there sustained required the reinstatement of discharged employes. The requirement interfered with freedom of contract which the employer would have enjoyed except for the mandate of the statute. The provision of the Act continuing the relationship of employer and employe in the case of a strike as a consequence of, or in connection with, a current labor dispute is a regulation of the same sort and within the principle of our decision. Neither the specific decisions in the cases cited, nor the principle upon which they rest with reference to the imposition of "reasonable regulations", sustain the power herein attempted to be exercised by the Board under the guise or pretense of imposing reasonable regulations, absolutely and utterly to destroy existing contracts of labor organizations of long established standing and embracing more than 30,000 employes of a general employer, and recognized as important affiliates of such a nation-wide body as the American Federation of Labor, and particularly where no question of representation was involved in the case and neither Section 8 (2) nor Section 9 of the Act applies to the case. To abrogate and annul contracts of over 30,000 out of 38,000 employes of the Consolidated Edison System without a charge or complaint in the pleadings in the case that the contracts of these employes were made without proper representation, without any question of representation being raised, and without, if such question had been raised, an investigation thereinto as particularly pro-

vided by the Act, and without the contracts themselves being brought into issue, and without the labor organizations of so many thousands of employes themselves being given notice or made parties before the acting tribunal, may hardly, it is respectfully submitted, be regarded as within "reasonable regulation" in the exercise of the commerce power. And when, in addition to all this, we find the power exercised *without the hearing inherent in fair play and due process*, it would seem that the last vestige of reasonableness in the exercise of the power is eliminated.

VI.

Many substantial parts of the testimony upon which the findings and decision of the Board purport to rest, and its course of proceeding to its final Order, violated basic requirements of evidence and procedure essential to due process of law.

The numerous rulings of the Trial Examiner over hundreds of objections to testimony, were affirmed, *en masse*, in one indiscriminate fiat of the Board (1 R. 71), and ratified by the Court below without other reason than that hearsay is admissible in Board proceedings. Much of such illegal testimony was made the basis in great part of the Board's decision and Order, which were rendered without that lawful evidence required by just judicature as indispensable to judicial dealings with substantive rights.

The due process clause assures a *full hearing* before the court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence, to be fairly heard, and to have judicial findings based upon the evidence and hearing.

B. & O. R. Co. v. *United States*, 298 U. S. 368-369, 80 L. ed. 1224.

Ohio Water Co. v. *Ben Avon*, 253 U. S. 287, 64 L. ed. 908 and the other decisions cited in note 29 appended to the text of 80 L. ed. 1224.

Morgan v. *United States*, 298 U. S. 468, 40 L. ed. 1288.

Morgan v. *United States*, 304 U. S. 1.

Brown v. *Mississippi*, 297 U. S. 286, 287, 80 L. ed. 687. 688.

Hebert v. *Louisiana*, 272 U. S. 312, 316, 71 L. ed. 272.

There are in the Record (pages 162-1316, Vols. 1, 2 and 3), over 200 exceptions taken by counsel for the Consolidated Edison Companies, to rulings of the Trial Examiner upon the admission and exclusion of testimony. As will be seen by reference to the rulings excepted to, objections were interposed because of general incompetency of much of the alleged evidence, and, more specifically, because second and third degree hearsay and other remote testimony, facts not in issue or embraced within the pleadings, secondary evidence when the best was obtainable, evidence not binding on the Consolidated Edison Companies, conclusions and arguments of witnesses for the Board, and vague, indefinite, unresponsive, self-serving testimony, and testimony based on rumor, were allowed into the Record by the Trial Examiner.

As it would unduly prolong this discussion to state herein the reasons in support of the many objections, or even to enumerate the exceptions themselves, this Honorable Court is respectfully referred to the reasons offered by counsel for the Companies at the time of the hearing. As illustrations of typical instances of the admission of matter in violation of the substantial rule of evidence guaranteed by due process of law for the protection of

substantial rights, see Record, pages: 214-215; 221; 224-225; 226-227; 228-229; 251; 255; 256-257; 261-262; 273; 275; 279-285; 309-320; 446-447; 448-450; 453-454; 458-469; 522-526; 554; 555; 603; 619; 732-733; 764-765; 883; 884; 888; 889; 960; 1023; 1044-1045; 1098-1100; 1161; and 1162.

When, on September 29, 1937, the Board directed that the case be transferred and continued before it, pursuant to Article II, Section 37 of the Rules, the result was that the Trial Examiner made no intermediate report as contemplated by Section 32, and there was no opportunity afforded to file exceptions to the report as contemplated by Section 34. No opportunity was presented either to file briefs or argue orally before the Board. With regard to this kind of procedure, the Court below felt impelled to observe:

> "This procedure is not one likely to inspire confidence in the impartiality of the proceedings. *It results in findings of fact being made by persons who did not see the witnesses—a matter which may have far-reaching consequences in view of the very limited power conferred upon the courts to review the Board's findings of fact.*"

In *Morgan* v. *U. S.*, 298 U. S. 468, L. ed. 1288, involving an order of the Secretary of Agriculture under an Act of Congress, this Court, referring to the duties and powers of the Secretary under the Statute, said:

> "There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact. • • •
>
> "A proceeding of this sort requiring the taking and weighing of evidence, determinations of fact based upon the consideration of the evidence, and the making of an order supported by such findings has a quality resembling that of a judicial proceed-

ing. Hence, it is frequently described as a proceeding of quasi-judicial character. The requirement of a 'full hearing' has obvious reference to the tradition of judicial proceedings in which *evidence is received and weighed by the trier of the facts.* * * * *The 'hearing' is the hearing of evidence and argument.* If the one who determines the facts which underlie the order has *not considered evidence* or argument, it is *manifest that the hearing has not been given.*"

In *Interstate Commerce Commission* v. *Louisville & Nashville Railroad Co.*, 227 U. S. 88, 33 S. Ct. 185, 57 L. ed. 431, in construing a federal Statute relating to hearings before an administrative body in connection with rate-making, this Court said (p. 91):

"But the statute gave the right to a *full hearing*, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the *facts proved. A finding without evidence is arbitrary and baseless. And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our Government.* It would mean that where rights depended upon *facts*, the Commission could *disregard all rules of evidence*, and capriciously make findings by administrative fiat. Such authority, however beneficiently exercised in one case, could be injuriously exerted in another, *is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.*

"In the comparatively few cases in which such questions have arisen, it has been distinctly recognized that administrative orders, quasi-judcial in character, are void if a hearing was denied; *if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence'* * * *"

Consolidated Edison and its affiliates were not given a hearing upon the amended Complaint against them after the close of the testimony before the Trial Examiner on July 6, 1937. Although they filed a brief, on July 15, with the Trial Examiner, the case rested and slept until the Board by its Order of September 29, 1937, required it to be *"transferred and continued"* before itself. Counsel for Consolidated Edison Companies were informed of that Order. They had previously requested the Board to be heard specifically upon the question of jurisdiction. (1 R. 19 to 23, 39). They never heard anything more from the Board until informed that it had disposed of the case by its Final Order of November 10, 1937. The Trial Examiner neither gave them a lawful *hearing* upon the evidence, nor did he formulate, as the Act provides, an Intermediate Report upon the testimony, and transmit such a Report to the Board. From and after July 6, he remained inactive and silent. The Board did likewise from July 6, to September 29, 1937, when its silence and inaction were momentarily interrupted only by its Order that the case be "transferred and continued" before it, following which its silence and inaction were resumed and continued until it suddenly launched its bolt of November 10, 1937. It gave no notice of any hearing; it invited to no hearings; it neither asked for, nor authorized, any appearance, argument or advices from the Counsel for Consolidated Edison. It had no Intermediate Report, nor had the Counsel for the Companies any —because none had been made. It had a voluminous record of testimony and exhibits embracing thousands of typewritten pages. The proceeding dealt with a system of seven corporations supplying a public utility to a community of some ten million people and with a veritable army of employees exceeding 38,000 in number—all cen-

affected of *the claim against him*, or of *the proposed action upon it, no opportunity to contest* the questions of fact which it presents by the cross-examination of the claimant's witnesses or the presentation of his own, and *no chance to be heard* upon the questions of law which it involves. *It considers without notice, condemns without hearing, and renders judgment without trial.* The order of the referee was unlawful and void."

After the amendments of June 14 in the Complaint, there was *no service whatsoever* of said Complaint so amended, nor of *any notice of hearing thereon* made or attempted by the Board, Regional Director, or Trial Examiner *upon any of the Petitioners herein.* As the amendments of June 14, 1937, of the Complaint made the *first* and *only* complaint or charge *affecting commerce within the Act* against the Brotherhood, the undeniable and indisputable facts above stated present a case to this Honorable Court of an Order of the Board entered upon a Complaint and striking down valuable property and personal rights of the Brotherhood and the Local Unions without legal service upon, or notice to, them or any of them, of any charge or complaint within the very same Act of Congress under which the Order of the Board purported to have been rendered, and from which alone the Board derived whatever jurisdiction or authority it possessed. The statement of such a proceeding demonstrates its illegality. If these Petitioners had none of the other grounds of objection herein preferred against the Order, this ground, it is respectfully submitted, suffices to establish its illegality and nullity.

IV.

The Act does not authorize the Board to exercise jurisdiction over the Consolidated Edison and its subsidiaries and their labor relations with their employes, or over the subject matter of the Complaint or Amended Complaint, including Petitioners' contracts which the Order destroyed, because said Companies and Local Unions are not engaged in, and their labor relations do not burden, "commerce" as defined in the National Labor Relations Act, the business of the Companies and their employes being wholly within New York, by the Statutes of which they are subject to full and complete regulation. The Act, as herein applied by the Board, conflicts with the Fifth and Tenth Amendments to the Federal Constitution.

The basic question of jurisdiction here presented is so luminously discussed in the Brief of the Consolidated Edison Company of New York, Inc., and its affiliated Companies, filed in this Court in these consolidated cases, that, in order to avoid repetition and prolixity herein, we respectfully beg to refer this honorable Court to that Brief. The earlier decisions of this Court on the subject in question are reviewed in the recent cases of *Carter* v. *Carter Coal Co.*, 298 U. S. 238-341; *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495-550; the *Jones & Laughlin* case, 301 U. S. 1; the *Freuhauf* case, 301 U. S. 53; *Friedman-Marks* case, 301 U. S. 72; and the recent *Santa-Cruz Fruit Packing Co.* case, decided by this Court March 28, 1938. It is respectfully submitted that the four decisions last named do not destroy the distinctions between interstate and intrastate commerce settled and preserved by this Court from the foundation of the Federal Government.

tered in and serving important sections of the Empire State of the Union and its great business and commercial Metropolis. Moreover, the Board felt itself authorized to treat and act upon, as within the Complaint before it, important contracts wherein were involved the labor, services and vital welfare of over 30,000 employes, the large and important business of the several Companies, and the comforts, conveniences and essential needs of millions of people, and also a most important and delicate constitutional question of conflicting authority and jurisdiction between a State and the Federal Union. In spite of all that, the Board never gave the Consolidated Edison Companies a *hearing* from the time its Trial Examiner closed the taking of testimony before himself until it closed the case by final judgment against the Consolidated Edison Companies.

With respect to the Brotherhood and the Local Unions of employes of the Companies, neither notice nor hearing was given them or any of them, by the Board, its Director or Examiner, at any stage of the proceeding from beginning to end.

In *Morgan* v. *U. S. et al.*, 298 U. S. 468, this Court said:

> "But, in determining whether in conducting an administrative proceeding of this sort the Secretary has complied with the statutory prerequisites, *the recitals of his procedure cannot be regarded as conclusive.* Otherwise, the statutory conditions could be set at naught by mere assertion. If upon the facts alleged, the 'full hearing' required by the statute was not given, plaintiffs were entitled to prove the facts and have the Secretary's order set aside. Nor is it necessary to go beyond the terms of the statute in order to consider the constitutional requirements of due process as to notice and hearing. For the statute itself demands a full hearing and the order is void if such a hearing was denied."

In the second *Morgan case* (304 U. S. 1), although all parties affected had been duly joined as parties and had appeared and taken part in the proceedings, an Order of the Secretary of Agriculture was declared invalid by this Court. On the crucial question of the sufficiency of the hearing, this Court said:

"The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. . The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by *adherence* to the basic principles that the legislature shall appropriately determine the standards of administrative action and *that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand 'a fair and open hearing'—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard.'* * *

"Congress, in requiring a 'full hearing', had regard to judicial standards.—not in any technical sense but with respect to those *fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature.* * * * The requirements of fairness are not exhausted in the taking or consideration of evidence but *extend to the concluding parts of the procedure as well as to the beginning and intermediate steps.*

"The *maintenance of proper standards* on the part of administrative agencies in the performance of their quasi-judicial functions is of the *highest importance* and in no way cripples or embarrasses the

exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purpose for which they are created and endowed with vast powers, *they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play.*"

National Board v. *Mackay Radio & Tel. Co.*, 304 U. S. ——, which involved questions as to the propriety of the procedure leading up to a final order, is authority for the proposition that substantial rights must be respected in these kinds of cases. This Court there held that deviations from the usual practice in that case did not call for the reversal of the order, only because:

> "* * * *the issues and contentions of the parties were clearly defined and* * * * *no other detriment or disadvantage is claimed to have ensued from the Board's procedure* * * *."

but clearly stated that:

> "*The respondent was entitled to know the basis of the complaint against it, and to explain its conduct, in an effort to meet that complaint,* * *"

In that case, unlike the instant one, *the party affected had been duly joined as a party and fully notified of the complaint against it, attended and took part in the hearing, and, when the matter was transferred before the Board at Washington, argued the cause orally and filed a brief.* Although there, a technical change in the charge was made by the Board after the original complaint had been filed, and no intermediate report was filed by the trial examiner, *the party aggrieved was throughout the proceedings fully apprised of all charges and relief sought*

against it. Such a situation, where mere technical omissions are relied upon, and "no other detriment or disadvantage is claimed," is obviously different from such a one as the instant case discloses, where valuable personal and property rights are taken away by an Order passed without the persons affected being either joined as parties or afforded legal notice of the proceedings, where the charge, complaint and amended complaint make no issue of the rights destroyed, where counsel for the Board affirmatively states that no issue of representation exists, and where no opportunity whatsoever, either by filing an intermediate report or otherwise, is afforded persons vitally affected to be fairly and fully heard, to explain their conduct in an effort to meet the complaint and to defend against it. In reaching its conclusion in the *Mackay* case, the Court expressly based it on the controlling facts that:

> "It appears that oral argument was had and a brief was filed with the Board after which it made its findings of fact and conclusions of law. * * * What we have said sufficiently indicates that the issues and contentions of the parties were clearly defined and as no other detriment or disadvantage is claimed to have ensued from the Board's procedure the matter is not one calling for a reversal of the order. * * *"

See also—

St. Joseph Stock Yards v. *United States*, 298 U. S. 38, 73.

Interstate Commerce Comm. v. *L. & N. R. Co.*, 227 U. S. 88, 91, 57 L. ed. 431.

Chicago, etc. R. Co. v. *Minnesota*, 134 U. S. 457.

Windsor v. *McVeigh*, 93 U. S. 274.

Riverside Mills v. *Menefee*, 237 U. S. 189.

Roberts v. *Anderson et al.* (C. C. A. 10), 66 Fed. (2) 874.

In re Rosser, 101 Fed. 562.

CONCLUSION.

It is respectfully submitted that the judgment of the United States Circuit Court of Appeals for the Second Circuit, refusing to set aside the Order of the National Labor Relations Board of November 10, 1937, and directing that the request of the Board for the enforcement of said Order be granted, was and is erroneous in the particulars and for the reasons hereinabove set out, and that the same should be reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 25.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-839; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-832; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-826; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-828; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-829; AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-830, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, *Petitioners,*

against

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

AND

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, *Intervenor-Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF FOR PETITIONERS, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND ITS ABOVE-NAMED LOCAL UNIONS, TO BRIEF OF RESPONDENT, THE NATIONAL LABOR RELATIONS BOARD.

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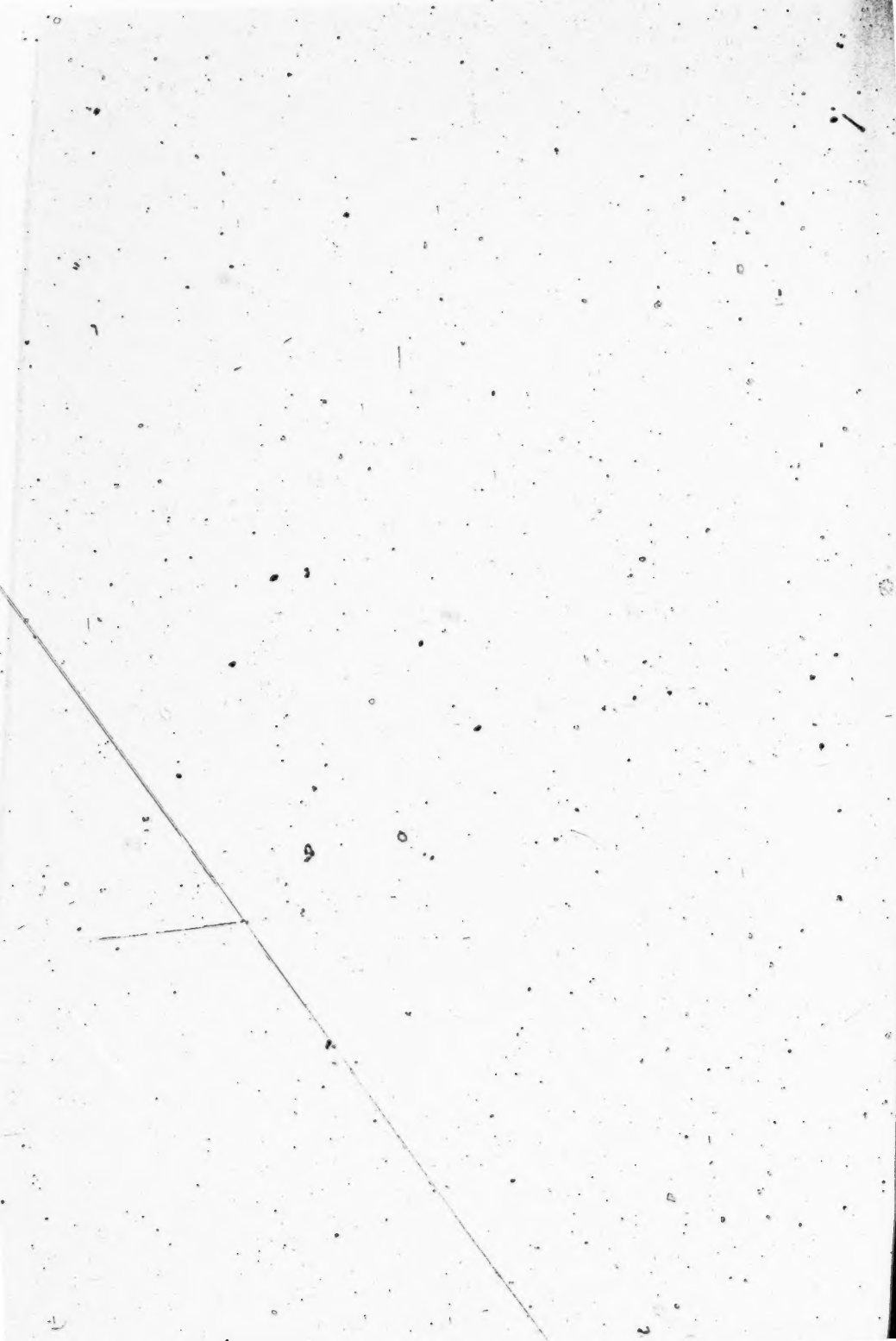

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Argument in reply to brief of Respondent, The National Labor Relations Board:

I. The National Labor Relations Board misconceives the factual situation before this Court in that the Board assumes, without any justification in the record for such assumption, that Petitioners were given actual notice and had actual knowledge of proceedings contemplating the destruction of Petitioners' property and contract rights. And the Board misconstrues the scope of the questions presented by these Petitioners in that the Board assumes that Petitioners concede the existence of "actual notice" or "actual knowledge" of such proceedings, all of which is, and at all times has been, emphatically denied by these Petitioners 1

II. The Board's averment that Petitioners do not assert that any prejudice resulted to them from the fact that they were not joined as parties is palpably erroneous. 11

III. The authorities cited by the Board in support of its contention that Petitioners were not indispensable parties to the proceedings which resulted in the order annulling Petitioners' contracts involved different situations from that in the instant case, and are not in point 16

IV. The argument of the Board that the act "forbade", "prohibited" and made "impossible" the joinder of Petitioners as parties to proceedings resulting in the Order destroying their property does not find support in the plain provisions of the Act. Such construction would make the Act, as applied herein, unconstitutional, and the Order of the Board null, void and in conflict with the Fifth Amendment to the Constitution 21

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IN THE

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INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, AND THE OTHER PETITIONING LOCAL UNIONS, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, *Petitioners*,

against

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF FOR PETITIONERS, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND ITS ABOVE-NAMED LOCAL UNIONS, TO BRIEF OF RESPONDENT, THE NATIONAL LABOR RELATIONS BOARD.

I.

THE NATIONAL LABOR RELATIONS BOARD MISCONCEIVES THE FACTUAL SITUATION BEFORE THIS COURT IN THAT THE BOARD ASSUMES, WITHOUT ANY JUSTIFICATION IN THE RECORD FOR SUCH ASSUMPTION, THAT PETITIONERS WERE GIVEN ACTUAL NOTICE AND HAD ACTUAL KNOWLEDGE OF

PROCEEDINGS CONTEMPLATING THE DESTRUCTION OF PETITIONERS' PROPERTY AND CONTRACT RIGHTS. AND THE BOARD MISCONSTRUES THE SCOPE OF THE QUESTIONS PRESENTED BY THESE PETITIONERS IN THAT THE BOARD ASSUMES THAT PETITIONERS CONCEDE THE EXISTENCE OF "ACTUAL NOTICE" OR "ACTUAL KNOWLEDGE" OF SUCH PROCEEDINGS, ALL OF WHICH IS, AND AT ALL TIMES HAS BEEN, EMPHATICALLY DENIED BY THESE PETITIONERS.

Ignoring the provisions of the National Labor Relations Act [Section 11 (4)] and its own Rules (Series 1, Article V, Section 1), and disregarding the mandatory rule of law that jurisdiction, especially in administrative proceedings such as this, must affirmatively appear by and from the Record, the Board now attempts to justify its omission to join Petitioners as parties by contending, not that Petitioners were given *legal notice,* or were otherwise legally brought into the proceedings, but that Petitioners had *actual notice* and *knowledge* of proceedings which were ultimately applied to *destroy their property and contract rights;* and by insisting, further, that the burden is upon Petitioners affirmatively to establish that the Board did *not* have jurisdiction over and did *not* give legal notice to these Petitioners.

The Board apparently concedes that neither the provisions of the Act nor of its Rules and Regulations (see Petitioners' principal brief, pp. 7-8, for text of Act and Rule) governing notice and service of process were complied with, as in fact, and as the record reveals, they were not, but rests its contention as to personal jurisdiction solely upon the alleged *actual notice* and *knowledge.* The Board so frankly states its position in its Brief, No. 25, page 2.

The Board does assert (Brief, p. 3) that a copy of the Complaint and notice of hearing was "delivered by West-

ern Union Messenger Errand Service *addressed* to petitioner International Brotherhood of Electrical Workers *at the office of its Local No. 3,* at 130 (actually addressed to 103) East 25th Street, New York City, on May 12, 1937," and that receipt of the same was acknowledged on the delivery ticket as follows: "Loc 3 IBEW D Kaplan", (for accuracy see 1 Rec. 18-19), and that a copy of the amended notice of hearing *was served upon the Brotherhood* by registered mail, return receipt requested, at *130* East 25th Street, New York City"; but the Board does not explain why Local Union No. 3, rather than the International Brotherhood or any of its seven local unions whose rights were affected, was selected for such "notice", although the Board knew the address of at least one of the local unions involved (R. 256, 273, 276, 277); nor does the Board, in any respect, deny that Local Union No. 3 was not one of the local unions whose contracts were destroyed by the Board's Order or whose members were employes of the Consolidated Edison System; nor does the Board attempt to justify the unexplained absence of the return receipt or the omission of reference to the return of the same in the clerk's affidavit for the alleged service by registered mail of the amended notice of May 25, which *return receipt is expressly required as proof of service by the Act and the Rules of the Board;* nor does the Board attempt to show how the assumed notice to one local union (not in any manner or respect interested in or connected with the proceedings) may be a valid service of process upon the International Brotherhood or upon another Local Union, all of which are separate and distinct entities, as this Court and other jurisdictions have unequivocally held (see Petitioners' Brief, pp. 34-36).

Exclusive of these serious and, it is respectfully submitted, fatal deviations from the procedure prescribed

and required by the Act and Rules of the Board, which would, in themselves, seem to establish affirmatively and conclusively that there was not even any *actual notice* given to Petitioners, if *actual notice* rather than *legal notice* suffices, is the deeply rooted principle of law and procedure that, where a special administrative board or tribunal is clothed with jurisdiction for particular purposes, such jurisdiction, in cases in which its exercise is attempted, must *affirmatively* be shown *by the proceedings themselves* to have been acquired. In *Galpin v. Page*, 85 U. S. 350, 370, this Court, after referring to "the distinction in the presumption of law when applied to the proceedings of a court of general jurisdiction, acting within the scope of its general powers, and when applied to its proceedings had under special statutory authority," states:

> "The distinction, nevertheless, has long been made by courts of the highest character, both in this Country and in England, and we had supposed that its existence was not open to discussion: 'However high the authority to whom a special statutory power is delegated', says Mr. Justice Coleridge of the Queen's Bench, 'we must take care that in the exercise of it the facts giving jurisdiction *plainly appear*, and that the terms of the statute are complied with. The rule applies equally to an order of the Lord Chancellor as to any order of Petty Sessions.' *Christie v. Unwin*, 3 Per. & Dav. 208.
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> " 'The jurisdiction in such cases, both as to the subject matter of the judgment, and as to the persons to be affected by it, *must appear by the record; and everything will be presumed to be without the jurisdiction which does not distinctly appear to be within it.*' *Morse v. Presby*, 5 Frost. 302."

There is not, moreover, and there cannot be, any showing, either within or without the Record, that Petitioners

were given actual notice or had actual knowledge of proceedings which contemplated the abrogation of their contracts and the consequent destruction of their personal and property rights.

So tenuous is the Board's argument as to *actual notice* and *actual knowledge* on the part of Petitioners, that it is compelled (see Board's brief, No. 25, pp. 3-5) to rest its contention upon what it declares to be a variety of *estoppel*, namely, that although the Record does not indicate even *actual notice* or *actual knowledge* of the proceedings on the part of Petitioners, yet, because, as the Board asserts, its answer to Petitioners' petition for review in the Court below averred that Petitioners had actual notice of the proceedings, and because this vague averment in its Answer was not expressly denied by the Petitioners, it necessarily follows that Petitioners had *actual notice* and *knowledge* of the proceedings concluded [illegible] Order. However, the

and required by the Act and Rules of the Board, which would, in themselves, seem to establish affirmatively and conclusively that there was not even any *actual notice* given to Petitioners, if *actual notice* rather than *legal notice* suffices, is the deeply rooted principle of law and procedure that, where a special administrative board or tribunal is clothed with jurisdiction for particular purposes, such jurisdiction, in cases in which its exercise is attempted, must *affirmatively* be shown *by the proceedings themselves* to have been acquired. In *Galpin v. Page*, 85 U. S. 350, 370, this Court, after referring to "the distinction in the presumption of law when applied to the proceedings of a court of general jurisdiction, acting within the scope of its general powers, and when applied to its proceedings had under special statutory authority," states:

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To be inserted on page 4 of the **Reply Brief** of the Brotherhood and Local Unions immediately following the quotation from *Galpin v. Page*, 85 U. S. 370:

Settlemier v. Sullivan, 97 U. S. 444.
Ex Parte Smith, 94 U. S. 455.
Cheely v. Clayton, 110 U. S. 701.
Bors v. Preston, 111 U. S. 252.
Sabariego v. Maverick, 124 U. S. 261, 292-293.
Guaranty Trust Co. v. Green Cove Railroad, 139 U. S. 137, 147-148.
Cooper v. Newell, 173 U. S. 555, 572-573.
Old Wayne Life Assn. v. McDonough, 204 U. S. 8, 16-17.

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> "The Petitioners respectfully ask that the Board's request for the enforcement of the said Order be denied, *upon each and all of the grounds stated in the petition for review verified and filed by these Petitioners on November 18, 1937,* * * *."[1]

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[1] The Petition filed by these Petitioners in the Circuit Court of Appeals for the Second Circuit for review and vacation of the Board's Order of November 10, 1937, explicitly stated (R. 1568, *et seq.*).

"Seventh. Your Petitioners, further, respectfully show that the said Complaint as first and originally issued by said Board through its said Regional Director and served upon said Respondent Companies did not allege that the matters and facts stated in paragraph 22 affected interstate commerce, but, on the contrary, paragraphs 23 and

The Board's theory that its omission to join Petitioners as parties was cured because Petitioners must be held to have had *actual notice by estoppel* is a most startling one when it is remembered that it was within the full and complete power of the Board, if it had desired to exercise its prerogatives, not only to have joined Petitioners as parties to proceedings which operated so destructively upon their rights, but also to have served upon them at their principal places of business, as required by the Act

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24 of said original Complaint, hereinabove literally recited, specifically alleged that the activities of the Respondents set forth in paragraphs 16 to 21, inclusive, occurring in connection with the operations of Respondents described in paragraphs 1 to 16, inclusive, have a close, etc., relation to commerce among the several States and tend to lead to labor disputes hindering and obstructing commerce and its free flow; and that the aforesaid acts of the Respondent enumerated above in paragraphs 16 to 21, inclusive, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (3) and Section 2, subdivisions (6) and (7) of said Act. In other words, the statements in paragraph 22 of favoritism upon the part of the Respondent Companies toward the International Brotherhood of Electrical Workers, are not embraced in or connected with the substantive and essential charges in the Complaint, but are plainly omitted therefrom. Said original Complaint and the Notice of Hearing and the Amended Notice of Hearing, of and upon said Complaint, were never served by said National Labor Relations Board or by its Regional Director for the Second Region, or caused by them or either of them to be served, upon your Petitioner, the International Brotherhood of Electrical Workers, at its well and generally known Office in the International Brotherhood of Electrical Workers Building at No. 1200 Fifteenth Street, N. W., in Washington, District of Columbia, or at any of its offices, nor upon any of your Petitioners, at said several Local Unions, hereinabove respectively mentioned, as composed of electrical workers and employes in the service of or in any manner associated or connected with said Consolidated Edison Company of New York, Inc., or any of its said Affiliated Companies. On the contrary, said original Complaint, Notice of Hearing and Amended Notice of Hearing were mailed, or caused to be mailed by said Board and its said Regional Director to the Office, No. 130 East Twenty-fifth Street, New York City, New York, of Local Union No. 3, composed of employes of electrical contractors, and having no connection or association with any of said Respondent Companies, and having not the slightest connection or concern with any of the matters or charges alleged in said Complaint or with any of said Local Unions of electrical workers and employes in the employ and service of any of said Respondent Companies, and having no interest in, relation to, or concern with the said Agreements entered into by and

and the Rules of the Board, both the original Complaint and notice of hearing of May 12, and the amended notice of hearing of May 25, 1937. The bald question here plainly presented is; In lieu of the non-joinder of Petitioners as parties to proceedings which resulted in an order abrogating their contracts, and in lieu of compliance by the Board with the provisions of the Act and of the Rules of the Board governing and requiring notice and service of process, and in view of the imperative rule of law

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between said respective Respondent Companies, said International Brotherhood of Electrical Workers, and said respective Local Unions aforesaid, or in or with the relations between said International Brotherhood and said Local Unions and said Respondent Companies. At said Office, 130 East Twenty-fifth Street aforesaid, of said Local Union No. 3, an alleged service of said Complaint was attempted to be acknowledged by one D. Kaplan, a member of said Local Union No. 3, and not an officer, representative or agent of your Petitioner, International Brotherhood of Electrical Workers, or of any of your Petitioners herein, and not connected in any way with any of said Respondent Companies, and not involved or interested in or concerned or connected with any of the matters, acts or things mentioned or complained of in said Complaint; and not authorized, competent or qualified, in any respect or manner, to accept or acknowledge service of any legal process or of any proceeding for or upon the part or behalf of said International Brotherhood of Electrical Workers or any of said Local Unions, the Petitioners herein. The Amended Notice of Hearing of May 25, 1937, was also mailed to said office of said Local No. 3 at 130 East Twenty-fifth Street aforesaid.

"Subsequently, said original Complaint, which, as aforesaid, omitted the allegations of paragraph 22 aforesaid from the material and substantial complaint which it preferred against said Respondent Companies, was for the first time, in a Third Amended Complaint, amended so as to make the allegations in paragraph 22 referable to interstate commerce and to alleged unfair labor practice proscribed by the Act. This was the first charge or accusation, so as aforesaid made in its Third Amended Complaint, by the said Board against any of the Respondent Companies of any alleged unfair practice under said Act with reference to the International Brotherhood of Electrical Workers; and this was done, for the first time, as aforesaid, after the hearing of and upon said Complaint, had been in progress for a number of days and the most important testimony for the Board in the Record, particularly that upon which the Labor Board in its said final decision and order mostly relied, namely the testimony of the C. I. O. witness, Harold Straub, and certain others, had been taken in several sessions of the hearing conducted by the Trial Examiner. Reference is here respectfully made to pages 518-523 of the Record of the proceedings at the hearing before the Trial Examiner, a true copy of

requiring an affirmative showing of personal jurisdiction *by the Board* by and from the Record, may there be, consistent with due process of law, such a thing as actual notice by estoppel, and in a proceeding by an administrative body, may such alleged actual notice by estoppel legally supply and support jurisdiction for an order which annihilates valuable contractual, personal and property rights. We respectfully submit that the tenets and traditions of our law answer the question decisively in the negative. In *Coe v. Armour Fertilizer Works*, 237 U. S.

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which said pages, for the convenience of this Honorable Court, is filed herewith marked "Petitioners' Exhibit No. 2."

"Eighth. Your Petitioners here, further, respectfully show that following said Amendment of said Complaint, as shown by said Third Amended Complaint, and by which said Amendment, for the first time the reference in said paragraph 22 to the alleged attitude and action of said Respondent Companies toward said International Brotherhood of Electrical Workers was brought within and made a part of said Complaint of unfair practices upon the part of said Respondent Companies under said Act, there was no service whatsoever of said Complaint as so amended, or of any notice of hearing thereupon, made, or caused or attempted to be made, by said Board, or its said Regional Director for the Second Region, or its said Trial Examiner conducting said hearing, upon your Petitioner, International Brotherhood of Electrical Workers, or upon any of your Petitioners, said respective Local Unions of electrical workers and employes in the employ and service of said Respondent Companies, respectively, or any of them.

"And your Petitioners respectfully show that upon and in the situation, so as above particularly described and ascertained, and without any change therein and without any amendment or supplementary proceeding by way of notice to or service of any proceeding whatever upon your Petitioners, or any of them, the said hearing proceeded until it was finally closed before said Trial Examiner, and on or about September 29, 1937, by Order of said National Labor Relations Board, was transferred to it at Washington, D. C.; that from the inception, issuing and filing of said original Complaint in said proceeding until said close of the hearing and proceeding before said Trial Examiner, and until after said proceeding had been, by said Order of the Board, "transferred and continued" before it at Washington, no notice thereof, and no copy of said Complaint and Charge, or of any Amended Complaint, and no Notice of Hearing or Amended Notice of Hearing upon any Amended Complaint, was ever served or caused to be served by said National Labor Relations Board or by its Regional Director for said Second Region, or by its said Trial Examiner, upon any of your Petitioners or upon any officer or official representative of any of them."

413, this Court, condemning a statute as embodying provisions repugnant to due process of law with respect to *notice* and *actual notice*, said:

"If a person against whom execution is thus issued as for an unpaid stock subscription does not happen to receive notice, extra-officially, *or receiving it makes no objection*, his property is taken in satisfaction of the corporation's debt—*manifestly without due process of law*. But, if it is said, plaintiff in error is not within that class; he *in fact learned of the execution before his property was sold or even his possession was disturbed, and he had an opportunity for a hearing in the present proceeding as to all questions upon which his liability depended*. The fallacy of this is that it ignores the issue of law raised by the petition of plaintiff in error, and substitutes an issue of fact for which he was not summoned and which he has not consented to litigate. To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.

"*Nor can extra-official or casual notice*, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the *due process of law that the Constitution requires*. In *Stuart v. Palmer*, 74 N. Y. 183, 188, * * * the Court said: 'It is not enough that the owners may *by chance* have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard.' The soundness of this doctrine has repeatedly been recognized by this Court.

"Thus, in *Security Trust & S. B. Co. v. Lexington*, 203 U. S. 323, 333, the Court, by Mr. Justice Peckham, said, with respect to an assessment for back taxes: 'If the statute did not provide for a notice in any

> form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is whether any notice is provided for by the statute' (citing the New York case). So, in *Central of Georgia R. Co. v. Wright*, 207 U. S. 127, 138, the Court said: *'This notice must be provided as an essential part of the statutory provision, and not awarded as a mere matter of favor or grace.'* In *Roller v. Holly*, 176 U. S. 398, 409, the Court declared: *'The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion.'* And in *Louisville & N. R. Co. v. Central Stock Yards Co.*, 212 U. S. 132, 144, it was said: 'The law itself must save the parties' rights, and not leave them to the discretion of the courts as such.'"

But there is yet another consideration which, in itself, would seem to answer the Board's contention that the notice which it avers was given was sufficient to confer jurisdiction over Petitioners, even if such notice actually was given, and this consideration is that such notice would not have apprised Petitioners of the issues which were adjudicated in the Board's final Order, in so far as Petitioners were concerned, because neither the validity of the contracts nor representation was in issue, or embraced, in the Charge, the Complaint or amended Complaint, or raised at the hearings or at any other time before the Board's final Order, and, moreover, at no time during the hearings was any statement made by anyone that the validity of the contracts, or any question of representation or election, was in issue, but, on the contrary, statements were made during the hearing by the Board's counsel that such questions were not involved and that

the Complaint was not directed against the I. B. E. W. (R. 279,[2] 283,[3] 285 [4]; 525-526).

II.

THE BOARD'S AVERMENT THAT PETITIONERS DO NOT ASSERT THAT ANY PREJUDICE RESULTED TO THEM FROM THE FACT THAT THEY WERE NOT JOINED AS PARTIES IS PALPABLY ERRONEOUS.

Petitioners, at every stage of the proceedings, and in every petition, pleading and brief filed by them in this cause, have repeatedly asserted and insisted that the failure of the Board to join them as parties to proceedings which terminated in the Order of the Board annulling and rescinding Petitioners' contracts has resulted to their grave prejudice and serious detriment and loss. The averment of the Board in this regard (see Board's brief, pp. 5, 7) is not understandable in the light of Petitioners'

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[2] "Judge Ransom: Is it the statement on behalf of the Board that it is directing this complaint against the I.B.E.W.?

"Mr. Moscovitz: *No, it is not the position of the Board that this complaint is directed against the I.B.E.W.;* it is directed against the Consolidated Edison System, but it becomes necessary, in the proceeding on this issue, to develop certain facts and circumstances concerning *the relationship between the company and the I.B.E.W.*

"Judge Ransom: May I ask if the Board contends that any issue of representation is involved in this proceeding?

"Mr. Moscovitz: *There is no issue of representation involved in this proceeding.*"

[3] "Trial Examiner Gates: *We are proceeding on the complaint as it is in the record.*

"Judge Ransom: *We are proceeding on the complaint, and that complaint does not in any way challenge or attack the I.B.E.W.*—"

[4] "Mr. Moscovitz: * * * *This is not an action, and I would like to make this clear, against the International Brotherhood of Electrical Workers. This is an action against the Consolidated system because of its discharge of certain employees, and because, by this discharge of certain employees and other acts, it interfered with the organizational activities of its employees.* I think that is very clearly stated in the complaint, and I submit the testimony that is being elicited through this witness, and that will be elicited from other witnesses similar in vein to that which this witness has given, is in support of the allegations of the complaint."

consistent position that they were entitled, because of the abrogation of their contracts by the Board's Order, to be joined as parties, so that they might have exercised their legal rights to cross-examine witnesses produced against them, to present evidence in their own behalf, to file a brief, to argue the cause, and in all essential respects to have had a full hearing in proceedings which were finally turned and directed so disastrously against their rights and interests.

The Board argues, on this point, that "Having had actual knowledge of the proceedings" the Petitioners could have availed themselves of the "opportunity provided by Section 10 (b) of the Act to "intervene and participate". But the Petitioners certainly did not have actual knowledge of any proceedings disclosing an intention or purpose to affect them or their rights, much less to terminate, annul and destroy their contracts. On the contrary, as references to the Record disclose, the assertion was made for the Board that the proceeding involved no question of representation and was not directed against the I. B. E. W. The Board, in this regard, loses sight of the important fact which must be conceded by it, that the proceedings before the Board were not initiated for the purpose of invalidating the contracts, and that the invalidation of the contracts was not necessary to a complete adjudication of the cause as initiated and presented, and, further, that neither the original charge of the United of May 5, nor the Complaint as several times amended, made any charge against the Petitioners or raised any issue as to the validity of the contracts or as to representation, and, in addition, no amendment of the Complaint until that of June 14, affected Petitioners under or within the Act.

Furthermore, had there been any issue as to the contracts or affecting the rights of Petitioners, and had they even been given actual notice of the proceedings or had actual knowledge of such issues, and had Petitioners availed themselves of the "opportunity" (not the right) to intervene, as provided by Section 10 (b), there would still have been no compliance with due process of law because the "intervention" referred to in that Section and in Article II, Section 19, of the Rules of the Board is so absolutely discretionary and so partial and limited that, where substantive property and personal rights are involved, it seriously fails to gratify constitutional requirements. Reference to the Section and the Rule reveals that even when intervention is permitted (and in the instant case two applications by independent labor unions were denied) the intervenor's activities are mandatorily limited by the Act to the mere privilege of *presenting testimony*. There is no right to be confronted with or to cross-examine witnesses, nor to invoke the processes of the Board relating to the summoning of witnesses or the production of papers or other evidence, nor to present evidence other than testimony, nor to argue the cause or to be heard on any question of law or fact, nor to file a brief, nor to do any other of the things customarily and ordinarily done at the hearing or trial of a cause in the defense and protection of the rights or interests of a party litigant.

The Board argues, further, that because Petitioners proceeded to petition the Court below for review pursuant to Section 10 (f) of the Act, "they could have applied to the Court below for leave *to adduce additional evidence* (Section 10 (e) and (f)) and thus remedied their

failure to appear in the hearings before the Board's Trial Examiner." In so far as this argument of the Board is critical of Petitioners' procedure, we submit that it is patently unfair because, had the Board in the first instance complied with the Act, its own Rules and Regulations, and the common concepts of fair play and due process of law, a situation requiring resort to the Court below for "leave to adduce additional evidence" under Section 10 (e) would certainly never have arisen.

But, exclusive of this, the fallacy of this argument of the Board is obvious because, assuming that the Court below would have granted to Petitioners the full relief as to "additional evidence" which Section 10 (e) provides, such relief would neither have remedied the prejudice inflicted upon Petitioners by the Board's original deviations from the Act, its Rules, and due process of law, nor have afforded Petitioners their day in Court or the full and fair hearing to which they were and are entitled under the Fifth Amendment to the Constitution. The pertinent portion of Section 10 (e) is:

> " • • • If *either party* shall apply to the Court for leave to adduce *additional* evidence *and* shall show to the satisfaction of the Court that such *additional* evidence is material *and* that there were reasonable grounds for the failure to adduce *such evidence in the hearing before the Board* • • • the Court may order such additional evidence to be taken before the Board • • • and to be made a part of the transcript • • •."

It is thus plain that, if the Court below, in the exercise of its discretion, had ordered "additional evidence" to be taken before the Board, Petitioners would have been

confined and limited in the protection of their rights solely to the taking of the same. They could not have had the right to be confronted with or to cross-examine the Board's or any other witnesses, no right to file a brief with, or to argue the cause, or to be heard on any question of law or fact before the Trial Examiner or the Board, no right to do any of the things customarily and ordinarily done at a hearing or trial of a cause in the defense or protection of rights or interests of a party litigant, except to adduce evidence. This mere right would not have afforded the full and fair hearing to which Petitioners were entitled by due process of law before the Board ordered the destruction of their property.

The Board, on this point, further maintains that "by failing so to apply (to adduce additional evidence), Petitioners evinced their approval of the record, and cannot here claim lack of opportunity to supplement it". This conclusion is plainly untenable, because Petitioners, in their challenge, in the Court below and in this Court, of the proceedings and of the Board's findings and Order as fundamentally illegal and unconstitutional, did and do now deny the legal sufficiency of the proceedings, as established in the Record, to sustain the Board's Order.

Suffice it to say, in reply to the Board's concluding and summarizing paragraph on this point, that Petitioners' challenge of paragraphs 1 (f) and (g) of the Board's Order is neither a formal nor a technical one, but is based upon and invokes the fundamental guaranties of due process of law which are protected against invasion and denial by the Fifth Amendment to the Constitution.

III.

THE AUTHORITIES CITED BY THE BOARD IN SUPPORT OF ITS CONTENTION THAT PETITIONERS WERE NOT INDISPENSABLE PARTIES TO THE PROCEEDINGS WHICH RESULTED IN THE ORDER ANNULLING PETITIONERS' CONTRACTS INVOLVED DIFFERENT SITUATIONS FROM THAT IN THE INSTANT CASE, AND ARE NOT IN POINT.

National Labor Relations Board v. Pennsylvania Greyhound Lines, 303 U. S. 261, has been distinguished in Petitioners' principal brief (see brief, pp. 16, 22-23).

United Shoe Machinery Co. v. United States, 258 U. S. 451, is in no respect in conflict with Petitioners' position here. In that case the rule was stated to be that *parties whose rights are injuriously affected are indispensable*, but that there, because the covenants which were declared invalid had been made for the benefit of the party who had been joined and proceeded against, the other parties to the covenants, *whose rights were not injuriously affected*, were dispensable. Here, Petitioners unquestionably had valuable and beneficial interests in the contracts which the Board's Order annulled, and for that reason were indispensable parties within the rule as affirmed in that case.

In *Meyer v. Washington Times Co.*, 76 F. (2) 988, the question of parties was neither involved in the case nor discussed by the Court.

New York Phonograph Co. v. Jones, 123 F. 197, involved an action for injunction to restrain the defendant from interfering with contractual rights of the *plaintiff* with a third party. The defendant had no contractual rights with the third party, and it was held that the latter was not indispensable to the suit for that reason and be-

cause "the knowledge which (was) charged to the defendant of the contractual relations (of plaintiff) is the essence of the charge." Thus that case and the one at hand clearly are dissimilar, both in the facts and in the questions involved.

In *E. L. Husting Co. v. Coca-Cola Co., et al.*, 194 Wis. 311, 205 Wis. 356, as in the *New York Phonograph Co.* case above, the proceeding was against defendants to enjoin interference by them with a contract between plaintiff and a third party, *who was actually joined as a defendant.* Defendants were not parties to the contract in question between the third-party defendant and plaintiff, and the point of joint contractual rights of such defendants was not involved. The third-party defendant was beyond the jurisdiction of the Court and *was not amenable to service of process,* and the Court there said (p. 320):

> "Any judgment here in plaintiff's favor against any or all of the answering defendants would, the Western Company (non-resident third party), not being a party, *in no sense be binding on that company so far as plaintiff is concerned, and vice versa.*"

In this case the Board's Order does not enjoin any third person from interfering with the contracts between these Petitioners and the Companies, but destroys the joint and mutual rights of these Petitioners and the Companies under their contracts, without making these Petitioners parties, or giving them legal notice of a proceeding having that destructive purpose in view.

Nokol v. Beeker, 318 Mo. 292, is similar to, and cites, the *New York Phonograph Co.* case. Again, as in *E. L. Husting Co. v. Coca-Cola Co., supra,* the contracting party was *actually joined* as a party defendant, but was not sub-

ject to service of process *because it was a foreign corporation not doing business in Missouri.* The Court said:

> "Accordingly, where by reason of their *absence from the jurisdiction of the Court,* or excessive number, or the fact that they are unknown, or other sufficient cause, it is wholly impracticable or exceedingly difficult or inconvenient to make all persons materially interested parties, the court will dispense with the general rule and proceed to a decree where this can be done without manifest injustice either to the parties before the Court or to interested parties who have not been brought in, *but not otherwise.*"

The situation in the instant case does not bring it within any of the exceptions warranting the omission of parties, as such exceptions are stated in the case above relied upon by the Board. None of Petitioners was absent from or beyond the jurisdiction of the National Labor Relations Board, all of them could have been made parties and legally summoned as such, nor was there an excessive number of parties in interest, nor were Petitioners or their addresses unknown to the Board (see testimony of Board's witness Straub, R. 256, 273, 276, 277). It would have been wholly practicable and perfectly convenient to have made Petitioners parties and to have served them with process in accordance with the Act—a situation which the Board does not deny or question. It is submitted that the decision cited distinctly supports, rather than contravenes, Petitioners' contentions on this point.

Alcazar Amusement Co. et al. v. Mudd & Colley Amusement Co., 204 Ala. 509, likewise involved an action to restrain a defendant, who was not a contracting party, from breaching Plaintiff's contract with a third person. The latter, although actually joined as a party defendant, was

a *non-resident* upon whom service could not be had. That case thus affords no support to the Board's argument.

In *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S. 373, and in *Buttrick Co. v. Federal Trade Commission*, 4 F. (2) 910, the question of parties was neither raised nor argued, nor was it passed upon or even discussed in the respective opinions.

General Investment Co. v. Lake Shore and Michigan Southern Ry. Co., 260 U. S. 261, has been commented upon in Petitioners' principal brief (p. 24). The Board claims that Petitioners refer to a different portion of the opinion than the Board does; but reference to the part referred to by the Board shows that the holding the Board relies upon was merely that a person owning a "stockholding interest" in a corporation is not an indispensable party to an action to enjoin such corporation "from entering or consummating (a) proposed consolidation". This, distinctly, is not the situation here.

Roos v. Texas Co., 23 F. (2) 171 (C. C. A. 2), *in which a bill was dismissed for want of indispensable parties*, wholly supports Petitioners' position that (as the Court there said), "rescission of a contract, or declaration of its invalidity, as to some of the parties, but not as to others" is not permitted. That case cites many of the decisions of this Court relied upon by Petitioners in their principal brief (see Brief, p. 25).

New Orleans Debenture Co. v. Louisiana, 180 U. S. 320, holds, on the question of parties, that, in an action in the nature of *quo warranto* to forfeit the charter of a corporation, even though such corporation is not legally organized, "it is not necessary that the individuals who were corporators or officers of the company be made de-

fendants or service of process be made upon them. The company itself may be brought into court by service upon its officers appointed pursuant to the charter under which it assumed to act". The Board maintains (see Board's Brief, p. 11) that that case is authority for the proposition that "The purpose and end of the rule (as to indispensable parties) is, therefore, fully satisfied if an appeal is taken by indispensable parties who were not joined in the court of first instance and if, on such appeal, opportunity to present objections to the validity of the decree is afforded. In such circumstances the Court has decided that any defect of parties is cured, and does not warrant reversal". That case does not so hold, because, in the first place, the individual corporators and officers were not, as the excerpt from the Court's opinion above quoted shows, held to be indispensable parties. And in the second place, the Court based its holding on the fact that (p. 331):

> "The original decree was entered after a trial upon the merits and the record shows that the officers and many of the stockholders were present at the trial, *and were witnesses and examined by the counsel for the company, and that in truth they made the whole defense.* * * * The corporators have not in any manner been impeded or embarrassed in the presentation of their defense by not being formal parties. * * * Many were present, as a matter of fact, and the defense which they interpose is *one of law upon undisputed facts.* There has been no taking of any property belonging to stockholders * * *."

An important feature which clearly distinguishes the case immediately above, as well as the cases of *American Surety Co. v. Baldwin*, 287 U. S. 156, and *Moore Ice Cream Co. v. Rose*, 289 U. S. 373, relied upon by the

Board in support of its argument that Petitioners' application for review subsequent to the Board's order cured the defect of non-joinder, and that due process does not require a hearing prior to judgment if defenses may be presented on appeal, is that the rule pronounced in those cases applies *only where there is involved a question of law, and not when questions of fact are in issue.* The Court in the *New Orleans Debenture Co.* case emphasized *that the question was solely one of law,* and reference to *the other cases reveals the same situation.* In each of the two latter cases this Court stated that "Due process requires that there be an opportunity to present *every available defense.*" Obviously, where the sole question is one of law, the court on appeal is enabled to pass upon the question fully, and parties may, as well, fully present their cause; but when, as in the instant case, important questions of fact are involved, and no right of confrontation, cross-examination and full hearing has been afforded, an appeal or opportunity for review does not afford to parties "opportunity to present *every available defense*" which due process of law requires.

IV.

THE ARGUMENT OF THE BOARD THAT THE ACT "FORBADE", "PROHIBITED" AND MADE "IMPOSSIBLE" THE JOINDER OF PETITIONERS AS PARTIES TO PROCEEDINGS RESULTING IN THE ORDER DESTROYING THEIR PROPERTY DOES NOT FIND SUPPORT IN THE PLAIN PROVISIONS OF THE ACT. SUCH CONSTRUCTION WOULD MAKE THE ACT, AS APPLIED HEREIN, UNCONSTITUTIONAL, AND THE ORDER OF THE BOARD NULL, VOID AND IN CONFLICT WITH THE FIFTH AMENDMENT TO THE CONSTITUTION.

In support of its contention that the Act forbade, prohibited and made impossible the joinder of Petitioners to the proceedings before it, the Board refers to Section

10 (b) of the Act which authorizes it to serve a complaint upon persons charged with engaging in unfair labor practices; Section 8, defining unfair labor practices by an employer; and Section 2 (2), in which a labor organization is declared not to be an employer. Although the Board interprets these Sections of the Act to mean that it was *impossible* for it to have joined Petitioners as parties, it is nevertheless respectfully submitted that such an interpretation is erroneous, and that the Board had full and complete authority, had it desired to do so, to have joined these Petitioners; and further, in view of the invalidation of Petitioners' contracts, it was constitutionally imperative upon the Board to have joined them and to have secured to them due process of law, in accordance with the Fifth Amendment. The construction placed upon the Act by the Board is in manifest derogation of the law of the land and of common right and justice.

The findings and declaration of policy, stated in Section 1 of the Act, contain nothing which may be construed as countenancing the contention here made by the Board, but, on the contrary, would seem plainly to indicate that, in effectuating the purposes of the Act, the Board's powers and duties were intended by the Act to be exercised in accordance with, and not in violation of, fundamental constitutional requirements; and, therefore, to join as parties to proceedings before it, all persons having substantive property or personal rights and interests in the subject-matter and object of the proceeding in which the Board is to exercise jurisdiction.

And the various principal provisions of the Act, defining the powers and directing the duties of the Board, indicate, also, a pervading intent that all such powers and

duties are designed to accord with and obey the provisions of the Constitution, the Law of the Land, and their traditional requirements of fairness and justice. All of the decisions of this Honorable Court upon the Act distinctly indicate that it is to be so construed.

And the doctrine is fundamental and familiar that legislation is to be construed, whenever and as far as possible, in accordance with, and not in contravention of, the demands of the organic law.

The Board's contention, here under consideration, would deny and exclude the vital power and duty upon its part to bring before it as parties to its proceedings, persons whose property and personal rights, inestimably precious and valuable, are definitely involved, and subject to annullment and deprivation in such proceedings before it. In other words, and plainly stated, the Board here claims the power, under the Act, to destroy the property of persons whom it has no power to bring before it as entitled to a hearing and all the securities and protection vouchsafed to the citizen by due process of law. It is earnestly submitted that this cannot conceivably accord with the Constitution and the Bill of Rights embraced in the Amendments. And if the Act may be so construed and applied in denial of constitutional rights, such construction and denial would render the Act unconstitutional and void.

And, having regard to the instant case, it is earnestly submitted, on behalf of the Petitioners, that if the Act may be construed and executed, as the Board contends, as prohibiting and making it impossible to join these Petitioners to the proceeding here in question wherein the property and contractual rights of these Petitioners may

be and have been destroyed, without legal notice of such intended proceeding, without legal process issued to and served upon them, and affording them the right and protection of a full hearing to defend their property and maintain their rights before the tribunal assuming jurisdiction to destroy both, and culminating in a judgment actually destroying both, then the Act, so construed and applied, and the Order and judgment of the Board pursuant thereto, are unconstitutional and void as in conflict with the due process guaranteed by the Fifth Amendment.

Statutes which omit to provide for the fundamental guaranties of due process, such as notice and hearing, or joinder of persons who may be injuriously affected under the operation of such statutes, are unconstitutional in their application, and proceedings conducted and orders or requirements issued under them, in deprivation of substantial rights and property, are nullities. "The law itself must save the parties' rights, and not leave them to the discretion of the courts as such." *Louisville & Nashville R. Co. v. Central Stock Yards Co.*, 212 U. S. 132, 144.

See also:

Coe v. Armour Fertilizer Works, 237 U. S. 413
Security Trust & Sav. Bk. Co. v. Lexington, 203 U. S. 323, 333
Central of Georgia R. Co. v. Wright, 207 U. S. 127, 138
Roller v. Holly, 176 U. S. 398, 409
Chicago R. Co. v. Minnesota, 134 U. S. 418.

CONCLUSION.

It is respectfully submitted that the judgment of the Court below was and is erroneous in the particulars specified and for the reasons set forth by the Petitioners in this cause, and should be reversed, and that the Order of the Board, in said particulars, should be vacated and set aside.

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October 13, 1938.

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FILED
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CLERK

IN THE

Supreme Court of the United States

October Term, 1937.

Nos. [redacted] - 25

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its Affiliated Companies, etc.,

Petitioners,

against

NATIONAL LABOR RELATIONS BOARD,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, et al.,

Petitioners,

against

NATIONAL LABOR RELATIONS BOARD,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.

BRIEF FOR UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA IN OPPOSITION TO PETITIONS FOR CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

Nos. 916, 950

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its Affiliated Companies, etc.,

Petitioners,

against

NATIONAL LABOR RELATIONS BOARD,

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UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.

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BRIEF FOR UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA IN OPPOSITION TO PETITIONS FOR CERTIORARI.

Statement.

These are petitions filed by the Consolidated Edison Company of New York, Inc. and certain other companies,

employers, and certain alleged labor unions, for a writ of certiorari to the United States Court of Appeals for the Second Circuit, to review a decision of the said Court of Appeals sustaining an order of the National Labor Relations Board made on the complaint of United Electrical and Radio Workers of America, the present respondent.

The alleged labor unions were not parties to the original proceeding, and the order of the National Labor Relations Board, sustained by the decision of the Circuit Court of Appeals, does not run against them. The record shows that these alleged labor unions were aware of the hearings conducted by the National Labor Relations Board, but did not seek to intervene in those hearings. They did, however, petition the Circuit Court of Appeals for permission to intervene while the matter was pending in that Court, and permission was granted them on the ground that they were parties aggrieved or affected by the order.

The Questions Raised on this Application.

The questions sought to be raised in this Court are stated by the Employers' petition to be seven. They are stated on pages 10-11 of these petitioners' petition and brief. The so-called labor union petitioners list six questions on pages 9-10 of their petition and brief. Some of these questions are clearly not within the rules governing applications for writs of certiorari, and in any event are of no particular importance. The important questions are the same in both lists, and may be stated briefly to be: first, whether the National Labor Relations Board had *jurisdiction* in the premises; and, second, whether it had *power* to enjoin the Employers from carrying out the provisions of an alleged contract between the Employer petitioners and the so-called labor union petitioners.

The Facts Found by the National Labor Relations Board and Sustained by the Court of Appeals.

The important facts found by the National Labor Relations Board and sustained by the Circuit Court of Appeals are as follows:

A. Organization and Business of Employers.

"Consolidated Edison Company of New York is both an operating and a holding company; it owns between 90 and 100 per cent. of the voting stock of each of six affiliates, its co-petitioners. The parent corporation and each of its subsidiaries, with one exception, is a public utility company within the meaning of the Public Service Law of New York and is subject to regulation by the state commission. The one exception is Consolidated Telegraph and Electrical Subway Company, which maintains and leases to others of the petitioners space in sub-surface ducts. The petitioners' labor relations are also subject to state regulation under a recent statute (Ch. 443, Laws of 1937), unless jurisdiction of the state labor relations board must yield to that of the National Board. The petitioners are operated as a unitary system. A few figures will indicate the magnitude of the system's business. In 1936 it supplied 97.5 per cent. of all electric energy sold in New York City, and practically 100 per cent. of that sold in Westchester County; it supplied 55.3 per cent. of the total gas sold in New York City and is the only utility supplying gas in Westchester County. It is the only central-station steam utility in New York City. Its employees number more than 40,000 and its total payroll in 1936, including annuities and separation allowances, was nearly $82,000,000. It used almost 5,000,000 tons of coal and more than 114,000,000 gallons of oil in the year 1936. All of the oil and all but an insignificant portion of the coal moved to the petitioners' plants from states other than New York. The out-of-state purchases are made from independent dealers and are delivered by independent carriers. Although the bulk of the petitioners' business, in respect to both the quantity of service and the number of consumers, is supplying electricity and gas for residential and local commercial uses, they

also have numerous consumers who are engaged in interstate or foreign commerce. The most striking illustrations of this class of consumers are the railroads. Thus, electric energy supplied to the New York Central, the New York, New Haven and Hartford, and the Hudson and Manhattan is used for the lighting and operation of their passenger and freight terminals and for the movement of interstate trains; and steam supplied to the Pennsylvania Railroad Company is used to operate switches in its tunnel under the Hudson River". (Opinion of the Circuit Court of Appeals. Record, pp. 1739-1740).

B. The Employers' Unfair Labor Practices.

Prior to the enactment of the National Industrial Recovery Act, the Employers pursued what is euphemistically called an "open shop policy"—which meant in practice that it did not tolerate any organization among its employees. When the National Industrial Recovery Act was enacted, and it became impossible to prevent employees from organizing, the Employers resorted to what then became a common device on the part of labor-union hating employers,—namely, the organization of so-called Employee Representation Plans, commonly known as "company unions." While these organizations were in existence, the Employers pretended that they were *bona fide* labor organizations, but their character as company unions is *now* undisputed,—as will be seen from the history of the organization of the alleged labor-union petitioners herein, given further below. The manner of the organization of these Plans is described with some detail in the Findings of the National Labor Relations Board and are printed at pages 85-88 of the present record. The National Labor Relations Board also found that these Plans, when organized, were practically functionless and *never engaged in any collective bargaining with the Employers.* The National Labor Relations Board further found that while these Plans were in existence, and up to April 12, 1937, when this Court declared the National Labor Relations Act constitutional, the Employers did not tolerate any genuine labor organization of its employees (Record, pp. 88-90). In order

to prevent such organization, the Employers resorted to the employment of spies for the purpose of discovering any attempts of their workers at organization, and of discharging those of their workers who were doing any organization work among the employees. These practices are described with some detail in the Findings of the National Labor Relations Board. (Record, pp. 103-125).

C. The Character of the Alleged Labor Union Petitioners.

The decisions of this Court in the *Jones & Laughlin* and accompanying cases, on April 12, 1937, made it impossible for the Employers to continue the so-called Employee Representation Plans. But they apparently considered it possible to continue to frustrate the purposes of the National Labor Relations Act. Speedy action was necessary, not only because the Employers could not continue to pay the expenses of the Employee Representation Plans, as they had been doing, without a flagrant violation of the law, but also because the United Electrical and Radio Workers of America, the present respondent, was engaged in an active organization campaign among the employees of the Consolidated Edison System. In these circumstances, the Employers hatched up a scheme whereby the concededly company unions were to be transformed over-night into bona fide labor unions. Fortunately for the Employers, Mr. D. W. Tracy, president of the International Brotherhood of Electrical Workers, was willing to assist in this scheme, for reasons shown in the record but which need not be gone into here. That the scheme was intended to frustrate self-organization by the workers involved, was expressly found by the National Labor Relations Board, and the finding is now sustained by the Circuit Court of Appeals. The manner in which the concededly company unions were transformed into alleged locals of the I. B. E. W. is described with some detail in the Findings of the National Labor Relations Board (Record, pp. 91-99). The Findings of the Board on this subject conclude with the following statement:

> "The evidence reveals the delineations of the respondents' design to dictate to their employees the

choice of their bargaining representative. The first step was to favor the I. B. E. W. by according it recognition at a time when its membership was negligible and its organization hardly commenced and when the respondents knew that the United was the only active labor organization among its employees. The next step was to deliver over the Plan organizations to the I. B. E. W. by making the respondents' position in the matter clear to the Plan representatives. Then followed the organizational drive in behalf of the I. B. E. W. by department heads, foremen, and Plan representatives, leading up to the stage of organization contemplated by Carlisle and Tracy as sufficient to justify the execution of contracts." (Record, p. 99.)

The detailed facts found by the National Labor Relations Board,—and even more so, the evidence adduced at the hearing as spread in the record,—prove, however, more than is stated by the Board in this concluding paragraph. *These facts conclusively prove not only that the Employers coerced their workers into joining the I. B. E. W., but that these alleged locals of the I. B. E. W. (being all of the labor union petitioners, except the I. B. E. W. as such, which has no interest other than that of its alleged locals) are locals of the I. B. E. W. only in name and are actually the same old company unions.*

D. The Alleged Contract Between Employers and the Socalled I. B. E. W. Locals.

Having succeeded in attaching new labels to the old company unions, the Employers proceeded to make "contracts" with these alleged unions, *all of whose officers were the same as those of the old company unions, who were concededly there by the grace of the Employers.*

In this connection, it should be noted that these contracts have never been submitted for ratification to the workers, nor have the officers who executed them ever been authorized to do so by the workers, or ever elected by the workers for the purpose of executing contracts on their behalf.

Nor was this a matter of accident: On the contrary, *it was part of the arrangement that the officers of the old company unions should continue as officers of the alleged I. B. E. W. locals and as such execute these contracts.* The contracts,—there are seven of them,—are dated variously, the earliest being dated May 28, 1937, and the latest June 15, 1937. But the record shows that these written instruments were merely a writing out *in extenso* of an agreement arrived at as early as *April 20, 1937,—before any of these alleged I. B. E. W. locals had been created and before any of the Employers' employees joined the I. B. E. W.*

The circumstances under which these contracts were executed are stated with some detail in the Findings of the National Labor Relations Board (Record, pp. 99-102). The decision of the National Labor Relations Board also contains the following "conclusions" on this subject:

> "We conclude that after April 12, 1937, the respondents deliberately embarked upon an unlawful course of conduct, as described above, which enabled them to impose the I. B. E. W. upon their employees as their bargaining representative and at the same time discourage and weaken the United, which they opposed. From the outset the respondents contemplated the execution of contracts with the I. B. E. W. locals which would consummate and perpetuate their plainly illegal course of conduct in interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to them under Section 7 of the Act. It is clear that the granting of the contracts to the I. B. E. W. by the respondents was a part of the respondents' unlawful course of conduct and as such constituted an interference with the rights of their employees to self-organization. The contracts were executed under such circumstances that they are invalid, notwithstanding that they are in express terms applicable only to members of the I. B. E. W. locals. If the contracts are susceptible of the construction placed upon them by the respondents (i. e., petitioners herein), namely, that they were exclusive collective bargaining agreements, then, *a fortiori*, they are invalid." (Record, pp. 102-103.)

POINT I.

The basic problem of jurisdiction has been disposed of in the *Jones & Laughlin* case. This case, therefore, does not present any novel question of law.

The argument on the question of jurisdiction is based on the claim that the Employers are not *themselves* engaged in interstate commerce, because they do not *sell or transport* anything in interstate commerce. It is conceded that they *purchase* immense quantities of materials in interstate commerce. We respectfully submit that the basic problem of jurisdiction has been disposed of in the *Jones & Laughlin* case.

National Labor Relations Board v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1.

Leaving entirely out of consideration the *purchase* of immense quantities of materials in interstate commerce, and limiting ourselves only to the activities of the Employers,—that is to say, to the character of the *services* in which they are engaged,—there is no new question of law presented by the case at bar, for it is settled by the *Jones & Laughlin* case that the *Employers themselves* need not be engaged in interstate commerce in order to bring them within the purview of the National Labor Relations Act. Under the doctrine of that case, the question is not whether the Employers themselves are *engaged in interstate commerce*, but whether their activities are such as to *affect* interstate commerce in such a manner that the cessation of these activities would injuriously affect or *burden* interstate commerce.

The question in this case is, therefore, not one of discovering the law of the subject, but rather its application to the facts of the case. This, we respectfully submit, does not bring the case within the rules laid down by this Court for the granting of writs of certiorari. If every application of known rules of law to a new set of facts were to be a ground for the granting of a writ of certiorari, the rules

governing the granting of writs of certiorari would have to be considerably broader than those now in force, as applied by this Court heretofore. But even if these rules were to be given the broadest construction, there would be no reason for the granting of certiorari in this case, *because there can be no doubt that the facts disclosed in this case bring the case within the purview of the National Labor Relations Act.* Without entering into a lengthy discussion of the subject, it is sufficient to point to the condensed statement of facts quoted by us above from the opinion of the Court of Appeals, and to the following passage from the same opinion, in order to remove all doubt on the subject:

> "It is,—said the Court below,—the use which some of their customers make of the electric energy and steam purchased from the petitioners, that furnishes the Board its main ground for claiming jurisdiction. The petitioners argue that they should not be chargeable for the independent acts of customers whom, by state law, they are compelled to serve. But the problem is not to be approached from the standpoint of vicarious liability. It is to be approached as a question of fact, namely, what will be the result upon commerce of a labor dispute between the petitioners and their employees. Should such a dispute result in interrupting the petitioners' service, the effects upon commerce would be catastrophic. We mention only some of them. Instantly, the terminals and trains of three great interstate railroads would cease to operate; interstate communication by telegraph, telephone and radio would stop; lights maintained as aids to navigation would go out, and the business of interstate ferries and of foreign steamships, whose docks are lighted and operated by electric energy, would be greatly impeded. Such effects we cannot regard as indirect and remote." (Record, p. 1741.)

POINT II.

The power of the National Labor Relations Board to order an employer to desist from the enforcement of an alleged contract which is the result of as well as the means of continuing an unfair labor practice is beyond question.

We respectfully submit that the existence of the alleged contract between the Employers and the so-called labor unions, does not raise any novel question of law. The powers of the National Labor Relations Board are ample to protect the workers coming within the purview of the National Labor Relations Act against any device which may be resorted to by Employers in an attempt to circumvent the provisions of that Act. The National Labor Relations Act is a remedial statute, and should be liberally construed. The evils sought to be remedied by that statute are in the same category as those sought to be remedied by the statutes against frauds and monopolies. There is, therefore, no set formula within which the aggrieved party must bring himself in order to be entitled to the protection of the Board or the Courts. Nor is there any form or mode of action which the statute cannot reach. As the Courts have repeatedly said in the cases of frauds and monopolies, the Courts look to substance and not to form. The question, therefore, never is what form the action complained of assumed, but *what was its substance and effect. In the present case, the National Labor Relations Board found, on ample evidence, and the finding was sustained by the Circuit Court of Appeals, that both the organization of the so-called I. B. E. W. locals, as well as the making of the "contract" in question was a means devised and used by the Employers to deprive their employees of the rights guaranteed to them by the National Labor Relations Act.*

That, we respectfully submit, disposes of the question. Not only does the National Labor Relations Act itself provide that such a finding is conclusive upon the Courts, but this Court could not, under well-known rules established by itself, review such a finding, so sustained.

That the form of *relief* granted is within the power of the National Labor Relations Board has been conclusively established by the decision of this Court on February 28, 1938, in the case of

National Labor Relations Board v. *Pennsylvania Greyhound Lines*, 302 U. S. —, 82 L. Ed. 524.

In that case this Court, speaking through Mr. Justice Stone, said:

> "Before enactment of the National Labor Relations Act this Court had recognized that the maintenance of a 'company union,' dominated by the employer, may be a ready and effective means of obstructing self-organization of employees and their choice of their own representatives for the purpose of collective bargaining. Section 2 (3) of the Railway Labor Act of (May 20) 1926 (44 Stat. at L. 577, chap. 347, 45 U. S. C. A., §152), had provided that representatives, for the purposes of the Act, should be designated by employer and employees 'without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.' We had held that in enforcing this provision, employer recognition of a company union might be enjoined and the union 'disestablished,' as an appropriate means of preventing interference with the rights secured to employees by the statute. Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, 281 U. S. 548, 560, 74 L. ed. 1034, 1041, 50 S. Ct. 427; see also Virginian R. Co. v. System Federation R. E. D., 300 U. S. 515, 542 et seq., 81 L. ed. 789, 796, 57 S. Ct. 592.
>
> "Congress, in enacting the National Labor Relations Act, had in mind the experience in the administration of the Railway Labor Act, and declared that the former was 'an amplification and further clarification of the principles' of the latter. Report of the House Committee on Labor, H. R. 1147, 74th Cong., 1st Sess., p. 3. It had before it the Railway & S. S. Clerks Case which had emphasized the importance of union recognition in securing collective bargaining, Report of the Senate Committee on Education and Labor, S. Rep. 573, 74th Cong., 1st Sess., p. 17, and there were then available data showing that once an employer has conferred recognition on a particular

> organization it has a marked advantage over any other in securing the adherence of employees, and hence in preventing the recognition of any other."
>
> *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 302 U. S. — , 82 L. Ed. 524, 527, 528.

The argument that the International Brotherhood of Electrical Workers is not a "company union," and that there is no specific finding that the "locals" in question are company unions is clearly of no avail. The International Brotherhood of Electrical Workers, as such, clearly has no interest in the case aside from its so-called locals. And its "locals" are clearly company unions within the meaning of the decision of this Court in the *Greyhound* Case. In this connection, it must be borne in mind that the Act itself does not use the expression "company union." This was done advisedly. For it was not the purpose of Congress in enacting this great piece of remedial legislation, to prevent the organization of company unions, but leave the workers exposed to the evils which this legislation was designed to remedy if the Employer should be fortunate enough to find some old established union that was willing to lend itself to the designs of the Employers. On the contrary, the whole tenor of the National Labor Relations Act, as well as its specific provisions, clearly show that the evil sought to be remedied was the interference of Employers with the free choice of representatives by their employees, and that *the condition sought to be established was that of absolute freedom of choice on the part of workers not only between "company unions" and real labor unions, but also as between competing labor unions.* The order of the Board would, therefore, be correct even if the so-called I. B. E. W. locals had been old existing and admittedly bona fide labor unions. *A fortiori* is this the case, when the facts show that these so-called I. B. E. W. locals are nothing but "company unions" in a new disguise. The National Labor Relations Board did not so label these organizations, because there was no necessity to do so. The law is not concerned with labels but with actions and practices. And the National

Labor Relations Board found that the creation of these so-called I. B. E. W. locals was the result of the unfair practices of the Employers. *This gives these organizations their character both as a matter of fact and as a matter of law.*

Nor does the existence of the alleged contracts make any difference. *Fraud* vitiates all contracts. So does *monopoly. So does an unfair labor practice.* Otherwise the whole law could be nullified by the Employer coercing his employees to submit to a contract. The National Labor Relations Board specifically found that the contract in question was illegal. Such a finding is not, however, at all necessary in order to sustain the order of the Board. The National Labor Relations Board is not concerned with the abstract questions of legality of a contract, even though it may have to make a finding of illegality in the course of its exercise of the functions conferred upon it by law. The question in this case is, therefore, not whether the contracts are illegal in the sense that they may not confer some rights upon somebody. The question is rather whether the Board, having found that these contracts were entered into as part of a scheme to deprive the workers of the rights guaranteed to them by the National Labor Relations Act, and through unfair practices condemned by that Act, may proceed to order the Employer to desist from enforcing them. The power of the Board to do so is now beyond dispute. And the necessity for so doing has been found by the National Labor Relations Board as a matter of fact. Indeed, it could not very well be otherwise. What this Court said in the *Greyhound* Case as to the effect of *recognition,* clearly applies with greater force to the "contracts" in question. Indeed, "recognition" could not be withdrawn from the I. B. E. W. so long as the "contracts" are being enforced. No greater weapon could have been designed to destroy the right of free and untrammelled collective bargaining by workers through representatives of their own choice than a "bargain" concluded in violation of the Act, if the Board were powerless to deprive that "bargain" of its efficacy. The Board, therefore, rightfully concluded that:

> "In order to establish conditions for the exercise of an unfettered choice of representatives by the respond-

ents' employees, the respondents will be ordered to cease and desist from giving effect to the contracts with the I. B. E. W. locals, from recognizing the I. B. E. W. as the exclusive bargaining representative of their employees, and from their other unlawful conduct; and to post notices that they will so cease and desist, that their employees are free to join any labor organization, and that the respondents will bargain collectively with any labor organization entitled thereto." (Record, p. 103.)

CONCLUSION.

The petition for a writ of certiorari should be denied.

Dated, New York, April 18, 1938.

Respectfully submitted,

LOUIS B. BOUDIN,
Attorney for United Electrical and Radio Workers of America.

[redacted]

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 957

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B–825; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B–839; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B–832; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B–826; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B–828; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B–829; AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B–830, THE SAID INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND EACH AND ALL OF ITS SAID LOCAL UNIONS AFORESAID BEING AFFILIATES OF THE AMERICAN FEDERATION OF LABOR, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 1737–47) has not yet been reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 65–130) have not yet been reported.

JURISDICTION

The decree of the court below (R. 1748) was entered on March 21, 1938. The petition for a writ of certiorari was filed and served on April 12, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10, paragraphs (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

As to the question of the Board's jurisdiction over petitioners in No. 916, and as to the procedural questions based upon (1) the claim that the issue of the validity of the contracts involved was not properly before the Board, (2) the absence of a report by the Trial Examiner and of oral argument by petitioners in No. 916, and (3) the refusal of the Board to permit petitioners in No. 916 to call certain witnesses at an adjourned hearing, the questions presented herein are identical with those raised by petitioners in No. 916 (hereinafter called "Consolidated"). The additional questions here presented are:

1. Whether the Act authorizes and empowers the Board to require an employer to cease and desist from giving effect to collective bargaining contracts with a labor organization upon findings that such contracts were entered into as and constituted part of an illegal plan of the employer to force membership in that labor organization to the exclusion of all others, in violation of Section 8 (1) of the Act, and that the contracts so entered into operate as a bar to the freedom of employees in the exercise of their rights to self-organization and collective bargaining as guaranteed in the Act.

2. Whether petitioners herein were denied due process of law by reason of the fact:

(a) That, in the absence of any issue or determination concerning the majority representation of employees, Consolidated was ordered to cease and desist from recognizing petitioners as the exclusive collective bargaining representative of the employees, upon findings that such recognition was accorded as a consequence of coercive conduct by Consolidated in violation of Section 8 (1) of the Act;

(b) That petitioners were not made parties to the proceeding before the Board, which was instituted solely against Consolidated, the employer;

(c) That hearsay testimony was admitted at the hearing.

STATUTE

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Sup. II, Title 29, Sec. 151 *et seq.*) are

set forth in the Board's brief in opposition to the petition for certiorari in No. 916, at pages 33–35.

STATEMENT

The decision of the Board, issued November 10, 1937, setting forth its findings of fact, conclusions of law, and order (R. 65–130), followed upon a hearing held upon a complaint issued by the Board pursuant to a charge duly filed, all as set forth in full in the Board's brief in opposition to the petition for certiorari in No. 916 entitled *Consolidated Edison Company of New York, Inc., et al.* v. *National Labor Relations Board*. Accordingly we respectfully refer the court to the Board's brief in No. 916 for a complete statement of the case (pp. 4–15). It is necessary here only to call the attention of the Court to the fact that a copy of the complaint and notice of hearing was delivered by Western Union Telegraph Messenger Errand Service addressed to petitioner International Brotherhood of Electrical Workers at the office of its Local No. 3 at 130 East 25th Street, New York City.[1] Receipt of the complaint and notice of hearing was acknowledged on the delivery ticket as follows: "Loc. 3, I. B. E. W. D. Kaplan," under date of May 12, 1937 (Bd. Exh. 1, R. 16–18). Thereafter on May 25, 1937, prior to the hearing, a copy of the amended notice of hearing was served upon the International

[1] The delivery ticket was incorrectly addressed to 103 East 25th Street, but delivery was acknowledged at the correct address, 130 East 25th Street.

Brotherhood by registered mail, return receipt requested, at 130 East 25th Street, New York City (Bd. Exh. 1, R. 34–6).[2] In addition, it is undenied by petitioners that, as set forth in the Board's answer to their petition for review in the court below (R. 1715), they had actual notice of the proceedings and that their counsel or other representatives attended the hearings therein. Petitioners at no time, however, participated in the proceedings before the Board, nor did they make application to intervene in those proceedings as they were entitled to do under Section 10 (b) of the Act. After the Board's order was issued, petitioners herein, like petitioners in No. 916, filed in the court below their petition to review and set aside the Board's order under Section 10 (f) of the Act (R. 1554–1691).

ARGUMENT

INTRODUCTION

The question of the Board's jurisdiction over Consolidated, and the procedural questions based upon (1) the claim that the validity of the contracts was not properly before the Board, (2) the absence of

[2] Petitioners attempt to make much of the absence from the record of a registered return receipt covering this service, but carefully avoid denying actual receipt of the amended notice of hearing. An affidavit in the record affirmatively shows that this notice was served in full compliance with the statutory requirements for service upon parties (R. 35–36), even though petitioners were entitled to no more than actual notice (*infra*, pp. 10–12).

a report by the Trial Examiner and of oral argument by Consolidated, and (3) the refusal of the Board to permit Consolidated to call certain witnesses at an adjourned hearing, have been raised by Consolidated in No. 916.[3] To the extent that petitioners herein may be heard upon these questions, the Court is respectfully referred to the Board's brief in No. 916.

In addition, petitioners herein urge (1) that the Board has no authority under the Act to order that effect not be given to contracts executed in violation of the Act; (2) that the Board may not require an employer to cease and desist from recognizing a labor organization as the exclusive representative of his employees for collective bargaining purposes, upon findings that such recognition was accorded in violation of the Act, unless the order is made in a proceeding for or involving the determination of majority representation; (3) that petitioners were

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[3] Consolidated has objected here as in the court below to the fact that the Trial Examiner made no intermediate report and to the absence of oral argument before the Board. As pointed out in the Board's brief in opposition in No. 916 (pp. 30–31), having failed to request oral argument, Consolidated may not claim the denial of a hearing not sought. Since Consolidated has not challenged the sufficiency of the Board's consideration of the evidence or asserted that the findings and order are not those of the Board, the questions before the Court in *Morgan* v. *United States*, 298 U. S. 468, and No. 581, this Term, decided April 25, 1938, are not in issue here. In any event, Consolidated was fully apprised by the Board's complaint of the charges against it and had full opportunity to meet them.

necessary or indispensable parties to the proceeding against Consolidated; and (4) that the admission of hearsay evidence at the hearing vitiates the findings and order of the Board.

All of these claims but the last are disposed of by the decisions of this Court in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, No. 413, decided February 28, 1938, and *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, No. 504, decided February 28, 1938. The last is plainly without merit, both because the Board's findings are based on competent evidence and because the Board is not bound by the strict rules of evidence applicable in judicial proceedings. None of these questions is worthy of review by this Court.

I

PARAGRAPH 1 (F) AND 1 (G) OF THE BOARD'S ORDER, WHICH REQUIRE CONSOLIDATED TO CEASE AND DESIST FROM GIVING EFFECT TO ITS COLLECTIVE BARGAINING CONTRACTS WITH PETITIONERS AND FROM RECOGNIZING PETITIONERS AS THE EXCLUSIVE REPRESENTATIVES OF ITS EMPLOYEES, ARE IN ALL RESPECTS VALID AND PROPER UNDER THE ACT.

The Board found that the contracts between Consolidated and its affiliates and the petitioners were both a part, and the culminating object, of an unlawful campaign by Consolidated to prevent its employees from freely choosing their representatives for purposes of collective bargaining and to force them to join the Brotherhood. Paragraph

1 (f) of the Board's order requires Consolidated to cease and desist from giving effect to these contracts.

Petitioners do not question the findings of fact upon which this paragraph of the order was based, nor did they do so in the court below. Their position is that the Board has no power under the Act or the Constitution to issue orders abrogating contracts, however unlawful such contracts may be. It is a sufficient answer that the Constitution does not protect rights in contracts procured by violation of law; nor can any inference of special regard for such illegal contracts on the part of Congress be drawn so as to overcome the plain language of the statute empowering the Board to order such affirmative relief as will effectuate the policies of the Act.

Apart from the answer under the Constitution and the Act, the decisions of this Court in the *Greyhound* cases indicate that petitioners' contention is without merit. The court there pointed out that the statute left to the Board "some scope for the exercise of judgment and discretion" in choosing the relief to be ordered in a particular case, and that it was for the Board to determine as an inference of fact what relief would most appropriately effectuate the policies of the Act. The fact that such orders might require the termination of existing contractual relationships cannot be regarded as material. Here there can be no question that the Board was warranted in concluding that

continuance of the contracts between Consolidated and petitioners would secure to Consolidated the illegal benefits procured by its past violations of the Act, and would interfere with and impair the right of Consolidated's employees to freedom in self-organization and to collective bargaining through representatives of their own choosing. The order was necessary, the Board found, "to establish conditions for the exercise of an unfettered choice of representatives." (R. 103.)

The *Greyhound* decisions, of course, squarely support paragraph 1 (g) of the order which requires Consolidated to withdraw recognition from petitioners as the exclusive representative of its employees. The objection raised by petitioners herein that the Act authorizes such an order only in a representation dispute and not in a proceeding under Section 8 (1) of the Act was sharply in issue in the *Greyhound* cases, was not accepted by the Court, and is clearly untenable.

It is clearly a matter of no consequence that in the *Greyhound* cases the exertion of pressure by the employer forced the employees into a company union of the employer's choice, whereas here the exertion of such influence through the medium of contracts forced the employees into an independent labor organization of the employer's choice. The continued existence of either type of influence is in plain violation of the command of the statute that the choice shall be that of the employees alone.

II

PETITIONERS WERE NOT DEPRIVED OF DUE PROCESS OF LAW BY ANY FAILURE OF THE BOARD TO GIVE THEM NOTICE OF THE PROCEEDINGS

Petitioners contend that the Board's order is invalid because they were indispensable parties to the proceeding before the Board and because they were not formally served with notice of the hearing (petition, pp. 21–29). The Act requires complaints to be served upon employers, who alone are subject to orders of the Board; it does not permit the Board to make labor organizations parties to its proceedings.* Such organizations, when they are indirectly affected by a proceeding before the Board, are protected under the statute (1) by the provision for intervention before the Board (Section 10 (b)), and (2) by the right to challenge the Board's order in the Circuit Court of Appeals (Section 10 (f)).

Irrespective, however, of these statutory safeguards, the claim that petitioners are indispensable parties is disposed of by this Court's decision in

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*The Act requires, and permits, a complaint to be served only upon persons charged with engaging in unfair labor practices. (Section 10 (b)). Only employers can be found to have engaged in such practices (Section 8), and a labor organization is expressly declared not to be an employer (Section 2 (2)). Accordingly, under the Act only employers are required to be notified or made parties, and it is only upon employers that an order of the Board can impose any enforceable obligation.

National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, No. 413, decided February 28, 1938, where the same contention was made. The Court there said:

> As the order did not run against the Association it is not entitled to notice and hearing. Its presence was not necessary in order to enable the Board to determine whether respondents had violated the statute or to make an appropriate order against them.

Petitioners attempt to distinguish the *Greyhound* case on the ground that the Association was company dominated, whereas petitioners constitute a *bona fide* independent labor organization. But this Court's decision that the Association was not entitled to notice and hearing did not rest on the nature of the organization, but on the fact, equally applicable to petitioners, that "the order did not run against" the organization in question. The chief differences between this case and the *Greyhound* case are that it appears that the Board here did give the petitioners actual notice of its proceeding, and that petitioners here did protect their rights by obtaining a review of the Board's order in the Circuit Court of Appeals.

The petition itself shows that the Board gave notice of the hearing to petitioners. The claim is that petitioners were deprived of due process because the notice was served on Local Union No. 3 of the International Brotherhood and not on the

main office of the Brotherhood or the locals composed of Consolidated's employees. It is not suggested that this Local did not transmit the notice served on it to the proper officials of petitioners, or that petitioners did not have actual notice of the hearing. Petitioners have not denied the allegation in the Board's answer to their petition for review (R. 1715) that their counsel or other representatives actually attended the hearings. In a proceeding of this kind, where the order does not run against petitioners and when they have a right to intervene if they choose, the Constitution does not require that they be formally served with process. At most they are entitled only to actual notice of the proceeding.

Since petitioners, with knowledge of the Board's proceeding, chose not to intervene before the Board, but rather to obtain review of the order in the Circuit Court of Appeals, they cannot assert that their constitutional rights were infringed. See *American Surety Co.* v. *Baldwin*, 287 U. S. 156; *Commercial Electrical Supply Co.* v. *Curtis*, 288 Fed. 657, certiorari denied, 263 U. S. 709. Nor does due process require a hearing prior to judgment, if defenses—as they were here—may be presented on appeal. *American Surety Co.* v. *Baldwin*, *supra*, and cases therein cited; *Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 384. *Cf. New Orleans Debenture Co.* v. *Louisiana*, 180 U. S. 320, 330, 332.

III

THE ADMISSION OF HEARSAY EVIDENCE BEFORE THE TRIAL EXAMINER PRESENTS NO REVIEWABLE QUESTION

Petitioners' claim that "illegal" hearsay "was made the basis in great part of the Board's decision and order" (petition, p. 44), sought to be supported by random references to the lengthy record, is contrary to fact. It completely disregards the fact that the Board's findings with respect to the principal issue of coercion are in large part based upon the admissions of Carlisle, the principal executive officer of Consolidated (R. 1202–11, 1217–23, 1234–42), and the testimony of Straub, an officer of the Plans later active in the Brotherhood, whose knowledge was detailed and first-hand (R. 167–298, 804–841).

Aside from the foregoing, the express provision of Section 10 (b) of the Act that "the rules of evidence prevailing in courts of law or equity shall not be controlling" in proceedings before the Board, and the recognized admissibility of hearsay evidence in analogous proceedings, render petitioners' claim void of merit, as the court below held (R. 1743–1744, 1745). *Spiller* v. *Atchison, Topeka & Santa Fe Ry.*, 253 U. S. 117; *National Labor Relations Board* v. *Remington Rand Inc.*, 94 F. (2d) 862 (C. C. A. 2); *John Bene & Sons, Inc.*, v. *Federal Trade Commission*, 299 Fed. 468 (C. C. A. 2d).

CONCLUSION

The judgment below is correct and in accord with the precedents. There is no conflict among the circuits. The petition should be denied.

Respectfully submitted.

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APRIL 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1938

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 25

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-825, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 65–130) are reported in 4 N. L. R. B. 71. The opinion of the Circuit Court of Appeals (R. 1737–47) is reported in 95 F. (2d) 390.

JURISDICTION

The decree of the court below (R. 1748) was entered on March 21, 1938. The petition for a writ

of certiorari was filed on April 12, 1938, and was granted on May 16, 1938. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10, paragraphs (e) and (f), of the National Labor Relations Act.

QUESTIONS PRESENTED

In large part, the questions presented by the instant case are identical with those raised in No. 19, *Consolidated Edison Company of New York, Inc., et al.* v. *National Labor Relations Board,* which was consolidated with the present case in the court below, and which is brought here for review of the same decision and order. See Brief for National Labor Relations Board, pp. 2–3. The additional question presented by the petition herein is:

Whether petitioners, although they were given actual notice and had actual knowledge of the proceeding instituted by the Board against petitioners in No. 19 (hereinafter referred to as Consolidated Edison Company), were deprived of due process of law in that the Board did not join them as parties to such proceeding.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. III, Title 29, Sec. 151, *et seq.*) are set forth in the Appendix, pp. 17–19.

STATEMENT

The decision of the Board, issued November 10, 1937, setting forth its findings of fact, conclusions of law, and order (R. 65–130), and the proceedings pursuant to which the decision was rendered, are all detailed at length in the brief for the Board in No. 19, *Consolidated Edison Company, Inc., et al.* v. *National Labor Relations Board,* pp. 3–13, to which the Court is respectfully referred.

The separate question presented by the present case requires only a short additional statement. A copy of the complaint and notice of hearing was delivered by Western Union Telegraph Messenger Errand Service addressed to petitioner International Brotherhood of Electrical Workers at the office of its Local No. 3, at 130 East 25th Street, New York City, on May 12, 1937.[1] Receipt of the complaint and notice of hearing was acknowledged on the delivery ticket as follows: "Loc 3 IBEW D Kaplan" on that date (R. 16–18). On May 25, 1937, prior to the hearing, a copy of the amended notice of hearing was served upon the Brotherhood by registered mail, return receipt requested, at 130 East 25th Street, New York City (R. 35–36).

The answer of the Board to the petition for review in the present case stated (R. 1711) that petitioners had actual notice of the proceedings and

[1] The delivery ticket (R. 18) was incorrectly addressed to *103* East 25th Street, but delivery was acknowledged at the correct address, *130* East 25th Street.

that their counsel or other representatives attended the hearings. This was not denied in the reply (R. 1734).[2]

Petitioners herein at no time participated in the proceedings before the Board, nor did they make application to intervene in those proceedings as they were entitled to do under Section 10 (b) of the Act. After the Board's order was issued, petitioners filed with the court below, on November 22, 1937, their petition to set aside the order pursuant to Section 10 (f) of the Act (R. 1554–1691). The Board answered on December 6, 1937, requesting enforcement of its order (R. 1711–1725). Petitioners replied on January 13, 1938 (R. 1734). The petition was consolidated with that in No. 19 (R. 1736–1737) and was denied by the court below (R. 1748). A writ of certiorari was granted on May 16, 1938 (R. 1748).

SUMMARY OF ARGUMENT

Petitioners' claim is that under ordinary equity practice they were indispensable parties to the proceedings before the Board's Trial Examiner and that their non-joinder constitutes a violation of due

[2] The reply filed by petitioners herein (R. 1734) adopted the reply filed by petitioners in No. 19 (R. 1726–1733). That reply did not deny actual notice to petitioners herein, since the Board did not make an allegation as to notice to the Brotherhood in its answer to the petition for review filed by the Consolidated Edison Company. Consequently, the allegation in the answer of the Board to the petition herein stands undenied.

process regardless of the facts that actual notice was given them, which they do not deny, and that no prejudice is asserted to have resulted from the claimed error of law. (1) The argument is based upon a false premise, since under ordinary equity practice petitioners were not indispensable parties and, even if they were, the defect was entirely cured by their full participation in the proceedings for review of the Board's order, and would not warrant reversal of a decree in equity. (2) Even were the premise true, the conclusion drawn by petitioners from it would not follow, since the Act forbade joinder of petitioners as parties defendant to the complaint and, in so doing, violated no requirement of due process. The order did not run against petitioners. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261. Further, petitioners were fully protected under the Act from injury to their interests by the opportunities to intervene in the proceedings before the Trial Examiner (Section 10 (b)) and to apply to the court below to set aside the Board's order (Section 10 (e) and (f)). Petitioners exercised the latter opportunity to the fullest extent and cannot now assert the prejudice which is essential to a claim that constitutional right has been infringed.

ARGUMENT

In large part, the questions raised by the instant case are identical with those raised in *Consolidated*

Edison Company, Inc. et al. v. *National Labor Relations Board,* No. 19, which is consolidated herewith. To the extent that petitioners herein are entitled to be heard upon these questions, we respectfully refer the Court to the brief for the Board therein. In the present brief we shall discuss only the additional question presented by the claim of these petitioners that they should have been made parties to the proceeding before the Board's Trial Examiner against Consolidated Edison Company, Inc., and the other petitioners in No. 19 (hereinafter referred to as Consolidated Edison Company).

A brief survey of the facts considerably narrows the question at issue. Petitioners cannot, and do not, contend that they were deprived of rights without actual notice and knowledge of the proceedings instituted by the Board. On May 12, 1937, a copy of the complaint and notice of hearing, addressed to petitioner International Brotherhood of Electrical Workers was delivered by a Western Union messenger at the office of its Local Union No. 3 at 130 East 25th Street, New York City, and receipt was acknowledged (R. 16–18). Although great stress is laid upon the fact that Local No. 3 was not a party to those proceedings (Br. pp. 8, 32–36), it is nowhere denied that the complaint and notice of hearing so served actually reached petitioners. Again, on May 25, 1937, prior to the hearing, a copy of the amended notice of hearing was served upon the Brotherhood by registered mail,

return receipt requested, at 130 East 25th Street, New York City (R. 34–36), and again, although petitioners emphasize the absence from the record of the return receipt (Br. p. 32), there is no statement that the notice was not actually received by petitioners. The allegation in the answer filed by the Board to the petition for review in this case that petitioners had notice of the proceedings and that their counsel attended the hearings (R. 1715), was not denied in the reply filed by petitioners.[3] The similar statement in the brief filed by the Board in opposition to the petition for certiorari was not denied in the brief filed for petitioners.[4]

Nor do petitioners assert that any actual prejudice resulted from the fact that they were not joined as parties. Having had actual knowledge of the proceedings, petitioners could have availed themselves of the opportunity provided by Section 10 (b) of the Act, *infra*, pp. 17–18, to intervene and participate. They chose not to do so. They did, however, file their petition in the court below pursuant to Section 10 (f), *infra*, pp. 18–19, and participated as parties in the proceeding by which the order of the Board was sought to be set aside. Petitioners could have applied to the court below for

[3] See footnote 2, *supra*, p. 4.

[4] In view of the above facts, the statement by petitioners on page 7 of their brief that "No legal notice, either actual or constructive, was at any time given," we assume is properly to be interpreted as referring to their contention with respect to "legal" notice, and not as a denial of actual notice.

leave to adduce additional evidence (Section 10 (e) and (f)) and thus remedied their failure to appear in the hearings before the Board's Trial Examiner. By failing so to apply, petitioners evinced their approval of the record, and cannot here claim lack of opportunity to supplement it.

Petitioners' challenge of paragraphs 1 (f) and (g) of the Board's order, by which Consolidated Edison Company is required to cease and desist from giving effect to its contracts with petitioners, and from recognizing them as the exclusive representatives of its employees,[8] is, in other words, a strictly formal one, based neither upon lack of actual notice nor upon actual prejudice. It is, in brief, that since petitioners would be indispensable parties to a suit in equity to enjoin Consolidated Edison Company from giving effect to its contracts with petitioners, their non-joinder in the proceedings before the Trial Examiner constitutes a violation of due process, irrespective of actual notice or prejudice. The answer to this argument is that (1) the premise is false and, (2) even were the premise true, the conclusion does not follow from it.

---

[8] Petitioners do not urge that any other parts of the order would be affected if their contention were sustained, and it is clear that only so much of it as affects petitioners would fail. *General Investment Co.* v. *Lake Shore & Michigan Southern Ry. Co.*, 260 U. S. 261; *Waterman* v. *Canal-Louisiana Bank Co.*, 215 U. S. 33, 49; *Horn* v. *Lockhart*, 17 Wall. 570, 579; *Shields* v. *Barrow*, 17 How. 129, 139.

I

PETITIONERS NON-JOINDER WOULD NOT REQUIRE REVERSAL OF A DECREE UNDER EQUITY PRACTICE

No deprivation of due process can be predicated upon asserted departure from the rule governing indispensable parties in equity suits, for under that rule petitioners were not indispensable parties to the proceeding before the Board's Trial Examiner. Petitioners rely upon the rule that a court of equity will not enter a decree adversely affecting the interests of one who has not been joined as a party, but they patently misconceive its scope. There can be no claim here that either the Board or the court below has ordered petitioners to do or refrain from doing any act. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271.

In fact, the basis of petitioners' complaint is solely their alleged loss of their contract rights under paragraphs 1 (f) and (g) of the order of the Board. Clearly, however, their contractual relationship with the Consolidated Edison Company does not make petitioners indispensable parties. Courts of equity are free to enjoin the performance of illegal acts by a party although he is under obligation to perform such acts by reason of contracts with persons not parties to the action. *Meyer* v. *Washington Times Co.*, 76 F. (2d) 988

(App. D. C.), certiorari denied, 295 U. S. 734; *New York Phonograph Co.* v. *Jones*, 123 Fed. 197 (S. D. N. Y.); *E. L. Husting Co.* v. *Coca-Cola Co.*, 194 Wis. 311, 205 Wis. 356, 375, certiorari denied, 285 U. S. 538; *Nokol Co.* v. *Becker*, 318 Mo. 292; *Alcazar Amusement Co.* v. *Mudd & Colley Amusement Co.*, 204 Ala. 509. And it is by no means rare that a court has occasion to declare a contract invalid, or to prohibit the making of other contracts, in suits to which only one of the contracting persons is a party. See, *e. g.*, *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373; *Butterick Co.* v. *Federal Trade Commission*, 4 F. (2d) 910 (C. C. A. 2d).

The decision in *General Investment Co.* v. *Lake Shore & Michigan Southern Ry. Co.*, 260 U. S. 261, 285–286, is directly in point. The Court there held that a party to an agreement to consolidate was not an indispensable party to a suit to enjoin the defendant from fulfilling its agreement by entering or consummating the proposed consolidation. Petitioners' reference to the case (Br. p. 24) is directed at a different portion of the opinion dealing with an attempt to enjoin the New York Central Company, rather than the Lake Shore, from voting certain stock, and does not in any way impair its authority on the issue here involved.

In any event, even if the Board's failure to join petitioners as parties were a departure from usual equity practice, the defect would not warrant reversal in the circumstances of the present case.

The defect has been fully cured by petitioners' full participation in the proceedings for review of the Board's order initiated in the court below upon their own petition. The sole purpose of the equity rule as to indispensable parties is to preclude the entry of decrees affecting absent persons under circumstances which foreclose their assertion and protection of their rights. *Roos* v. *Texas Co.*, 23 F. (2d) 171, 172 (C. C. A. 2d). The purpose and end of the rule is, therefore, fully satisfied if an appeal is taken by indispensable parties who were not joined in the court of first instance and if, on such appeal, opportunity to present objections to the validity of the decree is afforded. In such circumstances any defect of parties is cured, and does not warrant reversal. *New Orleans Debenture Co.* v. *Louisiana*, 180 U. S. 320, 330, 332.

II

NEITHER THE ACT, NOR ANY PROVISION OF THE CONSTITUTION, REQUIRES THAT PETITIONERS BE MADE PARTIES TO THE PROCEEDING BEFORE THE BOARD

The conclusive answer to petitioners' contention, however, is that even if they were indispensable parties under equity practice, their joinder was not necessary under the Act or the Constitution, upon violation of which their claim is entirely based. By section 10 (b) of the Act, *infra*, p. 17–18, the Board is authorized to serve a complaint only upon persons charged with engaging in unfair

labor practices. Only employers can be charged with such practices (Section 8, *infra*, p. 17), and a labor organization is expressly declared not to be an employer (Section 2 (2), *infra*, p. 17). The Act, therefore, made it impossible for the Board to join petitioners as parties respondent in the complaint which it issued against the Consolidated Edison Company. The status of intervenors could be acquired, of course, only on petitioners' motion. Section 10 (b). Although petitioners had actual notice of the proceeding, no such motion was ever made.

The circumstance that, under the Act, the Board can proceed and issue orders only against an employer does not imply that the interests of labor organizations or other persons who do not intervene may not be adversely affected by the order. The orders authorized by the Act may injuriously affect a company-dominated labor organization which the employer is required to disestablish, a minority union with whose rival the employer is directed to bargain as exclusive representative of the employees, employees whose discharge may be required to make way for other employees, or other persons in a variety of not unusual situations. The prohibition against joining such persons as parties to the complaint demonstrates an intent by Congress that they should become parties only by intervention and that the power of the Board to require appropriate action by the employer should not be dependent upon their presence.

This limitation of the parties indispensable in a proceeding before the Trial Examiner to two—the Board and the employer—is unquestionably valid. In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, it was urged, as it is here, that the labor organization from which the employer was ordered to withdraw recognition was entitled to be notified formally and made a party to the proceedings. The contention was conclusively disposed of (303 U. S. at p. 271):

> As the order did not run against the Association it is not entitled to notice and hearing. Its presence was not necessary in order to enable the Board to determine whether respondents had violated the statute or to make an appropriate order against them.

Petitioners advance several grounds upon which to distinguish the *Greyhound* case (Br. pp. 22–24), none of which, we submit, is substantial. The first distinction, that the Association in the *Greyhound* case was a company-dominated union, whereas petitioners here are not, ignores the fact that the decision of this Court was not rested upon the character of the Association, but upon the fact that the order did not run against it, which is equally true here. Petitioners argue that the Board contended in the *Greyhound* case that notice to the employer was notice to the Association. The argument, it is true, was one of several advanced by the Board, but since it was not accepted by the court or made the

basis of the decision, the fact that it cannot be made here is wholly irrelevant.

Another ground of distinction which petitioners suggest (Br. p. 23) seems to add to the authority of the *Greyhound* case here, rather than the contrary. Petitioners assert that the case is distinguishable because there the Association did not file a petition for review in the Circuit Court of Appeals under Section 10 (f). That fact, however, makes the present case a stronger one. In the *Greyhound* case the Board could only refer to the opportunity for review of the order by the Association; here petitioners have actually exercised their right of contesting the order in the Circuit Court of Appeals.

Moreover, wholly apart from the *Greyhound* case, there is clearly no constitutional necessity that petitioners be joined as parties. The rule as to parties is, of course, a rule of judicial administration (*Elmendorf* v. *Taylor,* 10 Wheat. 152, 166–167) and not of due process (*McCaughey* v. *Lyall,* 224 U. S. 558). But even if the right to become a party to a proceeding in which one's rights are incidentally affected be deemed a constitutional right, no particular form of proceeding safeguarding that right would be constitutionally required. Here petitioners were in fact informed of the proceedings before the Board and could have sought leave to intervene therein had they chosen to do so. Section 10 (b). Petitioners are now in no position

to complain that the statute failed to protect them adequately, even though the intervention was within the discretion of the Board, when they failed even to attempt to secure relief which would have protected them had it been granted. Cf. *United States* v. *Merchants & Manufacturers Traffic Ass'n,* 242 U. S. 178, 188. Moreover, petitioners could, and did, apply to the court below to have the order set aside. This, too, would protect them, for due process does not require a hearing prior to judgment, even of a party bound thereby, if defenses may be presented on appeal. *American Surety Co.* v. *Baldwin,* 287 U. S. 156, 168; *Moore Ice Cream Co.* v. *Rose,* 289 U. S. 373, 384. Finally, if petitioners believed that they had been prejudiced by their failure to participate in the taking of testimony, they could have applied to the court below for leave to adduce additional evidence before the Board. Section 10 (e) and (f).

We submit, therefore, that petitioners, while denied the status of indispensable parties by the Act itself, were afforded ample opportunities to protect their interest. "The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights." *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.,* 304 U. S. 333, 351. Petitioners availed themselves of their opportunity to petition for review, and cannot and do not claim prejudice arising from their nonjoinder as parties in the proceeding before the

Board. Clearly, no constitutional right has been infringed. Petitioners were no more deprived of due process than were the absent unions ordered to be disestablished in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, and *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272. See also *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; and *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 548.

CONCLUSION

We respectfully submit that the decision of the court below should be affirmed.

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OCTOBER 1938.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

* * * * *

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

SEC. 10 (b). Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof,

or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

* * * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings

and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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No. 19 & 25

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1938.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., et al.,
Petitioners,

against

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated With the COMMITTEE FOR INDUSTRIAL ORGANIZATION,
Intervenor-Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR AMERICAN FEDERATION OF LABOR.

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BRIEF FOR AMERICAN FEDERATION OF LABOR.

STATEMENT.

In recent months it has become necessary for the American Federation of Labor to criticize certain aspects in the administration of an Act which has often been called "Labor's Magna Charta." In the case before the court there are involved a number of these criticism-compelling

practices. Foremost are these: The failure of the National Labor Relations Board to join labor organizations as parties to proceedings in which it is contemplated that contracts of these labor organizations will be adversely affected; the assertion by the Board of the right to enter orders nullifying collective bargaining contracts of national labor organizations when no question of domination by the employer is involved, and the organization does not seek exclusive representation; and the practice of the Board of prohibiting any expression by an employer or by minor supervisory employees of sympathy with or preference for the aims or ideals of national labor organizations in contravention of the right of free speech under penalty of invalidating contracts entered into in good faith. These are practices which have within the recent past adversely affected affiliates of the American Federation of Labor. A broad tendency for them to recur with expanding force can be noticed today. It is because of the belief that such practices on the part of the Board are unwarranted and unauthorized under the Act that the American Federation of Labor has asked indulgence to file this brief as amicus curiae.

RESUME OF FACTS IN AS FAR AS THEY CONCERN THE I. B. E. W.

Seven local affiliates of the International Brotherhood of Electrical Workers, and the International Brotherhood, all affiliated with the American Federation of Labor, had entered into collective bargaining contracts with the Consolidated Edison Company, a public utility located in New York City. Such contracts, by their terms, applied only to members of the Brotherhood. The Brotherhood did not seek exclusive representation of all employees of the Con-

solidated Edison Company. The undisputed testimony discloses, however, that approximately 30,000 out of a total of 38,000 of the company's employees had become members of the Brotherhood and had sought the benefits of its contracts. (See table in appendix hereto annexed and page 1418 of Record.) The contracts secured benefits and advantages for the workers, and sought to outlaw strikes and lockouts by providing for arbitration. While such contracts were still in effect, and at a time when an overwhelming number, **over 80 per cent of the total employees of the company, were members of the I. B. E. W. locals**, the United Electrical and Radio Workers of America, an affiliate of the Committee for Industrial Organization, brought charges against the Consolidated Edison Company claiming violations of Sections 8 (1), 8 (2) and 8 (3) of the National Labor Relations Act. Accordingly the Regional Director for New York issued a complaint, twenty-nine paragraphs of which contain allegations that the company, engaging in interstate commerce, had unlawfully discriminated against certain employees, which practice affected commerce, and one paragraph of which (paragraph 22) alleged briefly that the company in violation of Sections 8 (1) and 8 (2) of the Act had interfered with the rights of the workers to join labor organizations of their own choosing and had dominated the administration of the International Brotherhood of Electrical Workers local unions. The complaint did not allege that the practice set forth under Paragraph 22 affected interstate commerce, nor was there any question of representation raised anywhere in the complaint. This complaint was served on I. B. E. W. Local No. 3 which is an organization of employees working for private electrical contractors having no connection with the company, having no relation to any of the seven International Brother-

hood of Electrical Workers locals involved in this controversy, and having no interest in any of the contracts here under consideration. Subsequently during the hearings the original complaint was amended to charge that the practices mentioned in paragraph 22 affected commerce. In neither the original nor the amended complaint was there any charge or implication that the contracts in question were invalid, nor in fact was any mention of such contracts made. This amended complaint was never served on the International Brotherhood of Electrical Workers or any of its locals, although the Board claims having sent the complaint by registered mail. However, no return receipts have as yet been produced. The International Brotherhood of Electrical Workers or its locals did not participate in the hearings.

The hearings over, the Board summarily ordered all proceedings transferred to it, presumably under Section 37 of its Regulations. No intermediate report was filed. The Board allowed the parties no oral argument. A brief filed by the company "presumably was brought to the attention of the Board" (opinion of Circuit Court). Subsequently the Board announced its decision. The charges of domination and interference with the organization and administration of the I. B. E. W. locals under 8 (2) were dismissed. The company was found to have favored the A. F. of L. affiliates, and to have influenced its employees to join the A. F. of L.—in what numbers and to what extent is not specified. Accordingly the Board issued a cease and desist order concerning the practices of favoritism and interference, and in addition issued an order requiring the company to refrain from recognizing the I. B. E. W. contracts.

SUMMARY OF ARGUMENT.

It is submitted:

(1) That the Board lacked jurisdiction to make an order abrogating the I. B. E. W. contracts, because of its failure to join the International Brotherhood of Electrical Workers or its affiliates as formal parties, or to notify them of the commencement of proceedings in which action against their contract was contemplated; and that the entry of such order in the absence of the International Brotherhood of Electrical Workers was a denial of due process of law.

(2) That in any event the International Brotherhood of Electrical Workers was denied a hearing because the complaint did not apprise it of the charges of the action abrogating the contract contemplated thereunder, and no opportunity was given it to defend its interests.

(3) That the Act does not authorize the Board to issue orders invalidating or adversely affecting contracts entered into between the company and a bona fide labor organization not claiming the right to exclusive representation of all employees, and there is no showing that a substantial number of its members were influenced into joining, and where the company has been ordered to take other action fully protecting rights and privileges of its employees under the Act.

(4) That the Act does not authorize the Board to condemn expressions of sympathy by an employer or its supervisory employees with aims and principles of national labor organization affiliates, regardless of forms such expressions of sympathy take, if there is no actual compulsion to join, or any discriminatory acts threatened or taken.

ARGUMENT.

I.

The Board Lacked Jurisdiction to Make an Order Abrogating the I. B. E. W. Contracts, Because of Its Failure to Join the International Brotherhood of Electrical Workers or Its Affiliates as Formal Parties, or to Notify Them of the Commencement of Proceedings in Which Action Against Their Contract Was Contemplated; and That the Entry of Such Order in the Absence of the International Brotherhood of Electrical Workers Was a Denial of Due Process of Law.

Preliminary and as a prerequisite to the determination of the jurisdictional and due process questions, it is necessary to determine whether the Brotherhood or its affiliates are indispensable parties to the proceeding which sought to annul or which resulted in annulling the contracts to which the Brotherhoods were parties.

A. **The Brotherhood locals are indispensable parties. The necessity for their joinder is well established at common law and equity.**

Under equity and common-law practices, the necessity of their joinder can hardly be denied. The International Brotherhood of Electrical Workers' locals have a separate legal status under the law. This status is not challenged. The proceeding, as it finally resulted, sought to annul contracts to which the Brotherhood, as representative of such of the employees who were members were parties, and under which such members had acquired certain rights and privileges. Assuredly the suit was in every respect similar to one in equity for the recision or cancellation of a contract.

Sufficient authority to conclusively demonstrate that if the suit had been brought in a court of law the International Brotherhood of Electrical Workers would have been required as a necessary party is stated in the briefs of the Consolidated Edison Company and the International Brotherhood of Electrical Workers. See, also, **Gregory v. Stetson**, 133 U. S. 579, 10 Sup. Ct. Rep. 422, 33 L. Ed. 792. No strenuous objection to this contention was raised by opposing counsel, and no valid reason is or can be advanced why the same rule as to necessity should not be applied to administrative bodies when they conduct hearings possessing all the qualities and attributes of judicial proceedings. See **Morgan v. U. S.**, 298 U. S. 468.

B. **The N. L. R. B. v. Pennsylvania Greyhound Lines case, relied on by Board as to joinder, is not applicable.**

It is contended, and the Circuit Court has so held, that the Brotherhood was not a necessary party to the present proceedings because its status as an employee representative placed it within the rule announced by this court in **National Labor Relations Board v. Pennsylvania Greyhound Lines**, 303 U. S. 261. But the ruling there involved was based on the fact that the disregarded party was admittedly established, controlled and dominated by the employer—a "company union," as the term is used in its invidious sense. This court held merely that such company union was not necessary to the proceeding, first, because its presence was not necessary to determine whether the company had violated the Act, and, second, because the nonrecognition order merely required the employer to disestablish and cease to recognize this union. This was an act the employer alone could do, for the union was the creature of the company, was company promoted, was, in effect, merely the "alter ego" of the employer in so far as

its labor relations were concerned. If the union was not company-dominated, if it enjoyed a separate existence, the company could not possibly have taken effective action to disestablish it, and the order would necessarily have been a nullity. In that sense, the order did not run against the union, either actually or in effect, for the company, being actually in a position of control, could itself, alone, take the necessary steps to give effect to the order of disestablishment. If the Board had wished to order disestablishment of the union without finding it company-dominated, it would necessarily have had to join such union as a party, for no action it could command the company to take would have any effect as against that union, the company's support not being prerequisite to the union's existence.

This ruling in the **Pennsylvania Greyhound case** and the reasoning on which it was based cannot be said to apply to the present circumstances. It is evident, of course, that the presence of the International Brotherhood of Electrical locals would not be needed in order for the Board to determine whether the company had engaged in any practices contrary to the Act. And it is equally evident that the orders requiring the company to cease and desist from discouraging membership in the United Electrical and Radio Workers and encouraging membership in the International Brotherhood of Electrical Workers, or in other ways facilitating the International Brotherhood of Electrical Workers in soliciting membership, or from in any way persuading or coercing employees to join the International Brotherhood of Electrical Workers, or from recognizing the International Brotherhood of Electrical Workers as exclusive representative of its employees, which orders comprise all but one of the many orders issued against the company, do not run against the

Brotherhood in the sense designated in the Pennsylvania Greyhound Line case. However, concerning the order under Section (f), which requires the company to cease and desist from "giving effect to their contracts with the I. B. E. W.," the Board deeming such order appropriate and necessary, certainly such order did run against the Brotherhood, not, of course, in the sense that it was directed against it in so many words, but in the sense that it adversely affected it, as much as would any order of a court rescinding or canceling the same contract in a suit by the company or by the third party, United Electrical and Radio Workers.

The Brotherhood, unlike the company union in the Pennsylvania Greyhound case, did have an existence under the law, an existence unchallenged at the time of the entry of the order. The Board deemed it appropriate to the proper enforcement of the Act that the contract entered into between this body and the company which had been found guilty under the act should be dissolved. The Brotherhood and the American Federation of Labor believes such action inappropriate and unauthorized for reasons hereinafter to be stated; whether it was or was not is not immediately relevant, for, in any event, such order would necessarily have an important effect on the status of the Brotherhood contract and in that sense would run against it. The order in the Pennsylvania Greyhound case, as we have seen, was said not to run against the union there involved because it could not, unless the union affected was in fact company dominated. Such is not the fact here, and the company having no control over the Brotherhood, could not withdraw from the contract without invoving a third party having a separate existence.

In short, the present case in no way approaches the

situation condemned in the Pennsylvania Greyhound case, where the right hand was pretending not to know what the left hand was doing. It is true that in neither case was there any order directed **against** the union involved. But the question is not against whom is the order directed, but whom does the order substantially and adversely affect; to say otherwise would be casuistry of the most dangerous sort. The determination must be made through a finding as to the reality and substance of the effect of the order on outside parties, not as to its immediacy or direction. The inquiry in this type of case is never limited to ascertaining those parties against whom the order or decree could be said to be directed.

C. The failure to join the Brotherhood is a jurisdictional defect.

In **Minnesota v. Northern Securities Company**, 184 U. S. 199, 46 L. Ed. 499, which was a case involving an attempt by the State of Minnesota to enjoin a holding company from voting the stock of two corporations which the holding company controlled, this Court held that such two corporations were necessary and indispensable parties to the proceedings because of **possible** effects any injunctional decree issued against the holding company might have on such corporations. Likewise **Balter v. Ickes**, 89 F. (2d) 856, involves a situation parallel to the present one. There a suit by a nonparty to a certain contract was commenced, the effect of which suit would be to influence, although indirectly, the rights of the parties under the contract. The Court stated:

> "This is not a suit by one of the parties to the contract seeking to annul it, but by third parties asserting a somewhat questionable interest who attempted to defeat the carrying out of the agreement. It fol-

> lows, we think, that before any final decree adjudicating the issues can be entertained, all the parties to the contract must be before the court and given an opportunity to be heard."

The cases could be multiplied indefinitely. The mere assertion of the principle would seem authority enough.

It is, of course, no answer to say in denial of our claim for joinder that the order is appropriate in order to fulfill the purpose of the Act or to render effective the relief given; for mere necessity, however urgent, would be no excuse for failure to join. The fact, however, that in the present case the order was not necessary adds weight to the arguments for necessity of joinder and serves further to distinguish the Pennsylvania Greyhound case on the ground that there the action was appropriate, but here it is not. The lack of appropriateness of the present order is discussed at length elsewhere in this brief in connection with the question of the authority of the Board to enter the order under the circumstances here present.

The International Brotherhood of Electrical Workers and its locals being indispensable parties, it results that the Board was without jurisdiction to make the order under consideration.

In **Barney v. Baltimore**, 73 U. S. 280, 18 L. Ed. 825, the theory under which failure to join necessary or indispensable parties can be considered a jurisdictional defect is discussed at length. The rule has last been affirmed in **Employers Re-Insurance Corporation v. Bryant**, 299 U. S. 374, 81 L. Ed. 289, when the Court said:

> "By repeated decisions in this court it has been adjudged that the presence of the defendant in a suit in personam, such as the one now under discussion, is an essential element of the jurisdiction of a District

(formerly Circuit) court as a Federal Court, and that in the absence of this element the court is powerless to proceed to an adjudication."

See, also, **Balter v. Ickes**, supra.

The rule, of course, applies to administrative procedure when the tribunal involved is exercising quasi-judicial functions. See **Interstate Commerce Commission v. Louisville & N. R. Co.**, 227 U. S. 88, 33 Sup. Ct. Rep. 185, 57 L. Ed. 431.

D. **The Act does not and cannot dispense with the necessity of joining the Brotherhood.**

It was asserted by counsel for the Board that the rule of necessary parties is one applicable to equitable proceedings only, and has no application to a proceeding under a statute. If this argument assumes that the present proceeding lacks analogy to a proceeding in equity to rescind or cancel a contract, then, clearly, it is untenable, as has been demonstrated. If the argument asserts that the rule could be abrogated by statutory authorization, it is likewise in error, and for several reasons. Assuming that it is possible for the legislature to change the common-law rule, then strong and affirmative language to that effect would necessarily have to be employed to indicate such intention. Examination of the statute fails to disclose any such language; there is no declaration that any class of persons need not be joined, and there is nothing in the Act permitting the Board not to include as parties whomsoever may be necessary to adjudicate rights. That no particular procedure is prescribed by the act is not in itself conclusive, for common-law requirements necessary to give jurisdiction to take the action contemplated must

then be followed. Nor is it conclusive that the Act merely provides for a permissive intervention of interested parties. Certainly no such permitted intervention can be taken advantage of unless notice to those who under common law definitions may be indispensable is in some way given so that such parties can be informed of the necessity of taking action to protect their interests. The Brotherhood does not complain that, notice given, the initiative or burden of protecting its interests is cast upon it.

Counsel for the Board assert that the requirements of necessary parties can be altered in the interests of justice and is therefore not one of due process. But the second conclusion does not follow from the first. Admittedly it is within the power of the legislature to vary or alter the rule so as to permit, for instance, appearance by representation; but certainly it cannot be seriously contended that the permitted scope of change can extend to the complete elimination of parties whose rights will be affected by the proceedings. While the requirement is in one sense jurisdictional, in a larger sense it embodies due process principles in that the attempted enforcement of a decree in the absence of the party affected by the decree deprives such party of a hearing. These two concepts are interrelated and are used interchangeably by the courts. The case of **Barney v. Baltimore**, supra, contains a discussion of the due process as well as the jurisdictional phases of the doctrine, and we refer the Court to that decision. The general rule, as well as the exception thereto referred to by counsel for the Board, is stated in 12 C. J., 1227, Section 1003, as follows:

> "It is a fundamental principle of due process that the rights of a person may not be adjudicated in a proceeding to which he is not a party. Notwithstanding this general rule, however, it is competent for the

legislature in the interests of justice to provide that in certain cases the rights of persons may be affected by proceedings to which they are not made a party in person, but by representation only."

See, likewise, **State v. Guilbert** (Ohio), 47 N. E. 551.

E. The Brotherhood has not waived its rights by filing a petition for review.

It is claimed that the Brotherhood and its locals have waived their rights by filing a petition for review in the Circuit Court. The case of **New Orleans Debenture Co. v. Louisiana,** 180 U. S. 320, cited in support of this contention, is entirely inapplicable, for in that case the parties had appeared during the trial and in all of the proceedings up to and including the presentation of the case in the Supreme Court. In the present case it was not until the order abrogating their contracts was brought to the attention of the Brotherhood that it intervened, and this was only for the purpose of appealing to the Circuit Court of Appeals to request that this order be set aside. No other participation in the proceedings was ever had. It is difficult to see what other procedure than intervention could have been attempted by the Brotherhood in order to protect its rights. The fact that actual notice of the proceedings might have been had is immaterial. See **Cole v. Armour Fertilizer Works,** 237 U. S. 415, 59 L. Ed. 1027. A question relating to jurisdiction can be raised at any time in the proceedings.

F. The Brotherhood has never been properly served with notices of the proceedings.

Failure to join the International Brotherhood of Electrical Workers has been demonstrated to constitute a ju-

risdictional error and one depriving the parties of constitutional rights. Appellee asserts compliance with the requirements by service of notice of the proceedings on I. B. E. W. Local No. 3. This local admittedly has no interest in the subject matter of the suit, and is not and has not been shown to be an agent or duly authorized representative of the International Brotherhood of Electrical Workers or of the locals whose contracts were affected. Local 3 is an association of employees working for electrical contractors, and while affiliated with the International Brotherhood of Electrical Workers is in no way affiliated with or has it any connection with the seven locals here involved, which are organizations of public utility employees.

Whether service on a local union affiliated with an International Union is service on the International Union is a question that has been many times before the courts. See **Operative Plasterers Association v. Case**, 93 F. (2d) 56. No evidence justifying the Board's contention that service on the local would be service on the International has been introduced by the Board. It would appear that the Board has the burden of proof. Agency is a question of fact whose proof rests upon the party asserting its existence. **Schutz et al. v. Jordan et al.**, 35 L. Ed. 745, 141 U. S. 213. It is likewise the law that the burden of proving notice rests with the party relying on its existence (**Empire State Surety Co. v. Pac. Nat. Lumber Co.**, 200 Fed. 224). Without any other facts than those present in the record it would appear (and the fact is) that Local 3 is a distinct unrelated entity having no such connection with the International or the locals as would amount to imputation of notice. See **United Mine Workers v. Coronado Coal Company**, 259 U. S. 344, 60 L. Ed. 975; **Dean v. International Longshoremen's Association**, 17 Fed. Supp.

748; **Christian v. International Association of Machinists**, 7 Fed. (2d) 481.

Furthermore, the original complaint, which under the practice of the Board is the original notice, which was the only one in which any service at all was proved, failed to allege that the alleged illegal activities which might be said to affect the International Brotherhood of Electrical Workers affected interstate commerce. This, of course, is a vital element and the failure to allege this is destructive of the proceedings. See **United States v. Esnault-Peterie**, 299 U. S. 201, and **U. S. v. Seminole Nation**, 299 U. S. 214, 81 L. Ed. 316.

The charge that actual notice had been acquired by the International Brotherhood of Electrical Workers and its locals receives no support in the record. Even if it be assumed that actual notice was had, still this in not sufficient compliance with jurisdictional and due process requirements, the International Brotherhood of Electrical Workers and the locals involved having been given no opportunity to present evidence as a party to the proceedings. As stated in **Cole v. Armour Fertilizer Works**, 237 U. S. 413:

> "Nor can extra-official or actual notice of a hearing, granted as a matter of favor or discretion, be deemed a substantial substitute for the due process law that the constitution requires. In Stewart v. Palmer, 73 N. Y. 188*, the court said, 'It is not enough that the owners may by chance have notice or that they may as a matter of favor have a hearing * * *.' The soundness of this doctrine has been repeatedly recognized by this court."

II.

In Any Event, the International Brotherhood of Electrical Workers Was Denied a Hearing Because the Complaint Did Not Apprise It of the Charges of the Action Abrogating the Contract Contemplated Thereunder, and No Opportunity Was Given It to Defend Its Interests.

Assuming a proper service has been made upon the I. B. E. W., and that the I. B. E. W. locals are necessary parties, due process considerations raise still another obstacle to the validity of appellee's course of procedure. In the present case the I. B. E. W. were never informed of any charges or complaints involving or requiring the abrogation of their contracts so as to be able to present a defense on this point until the order of abrogation was entered in its final form. As a result, the Brotherhood has been denied a hearing within the meaning of **Morgan v. U. S.**, 304 U. S. 1. The plea is not a technical one. Rather, the defect is one of substance. At no time until the entry of the final order was the Brotherhood aware or put on warning that the Board intended abrogating the contract. The Board's custom of filing an intermediate report, which may have apprised the Brotherhood that action was to be taken against it, and to have permitted it to make argument before the final order was entered, was omitted in this case. We are aware, under **N. L. R. B. v. Mackay Radio & Telegraph Co.**, 304 U. S. 33, decided May 16, 1938, that the absence of such intermediate report is not of itself a vital defect to the proceeding. However, that same case reiterated the rule that adverse parties to proceedings by administrative bodies are entitled to know the basis of the complaints against them and the action contemplated thereunder.

The parties in the present case, unlike those in the **Mackay case**, never knew of any complaint against them concerning the abrogation of their contracts, and were never informed that such action was contemplated against them. It cannot be said, as was said in the Mackay case, that at no time was there any misunderstanding of the basis of the Board's complaint. In the present case the Board's complaint, to the extent of twenty-two paragraphs, merely charged discriminatory conduct by the company. One paragraph, the only one which in any way might be said to relate to the Brotherhood, charged interference by the company with its employees' right to choose representatives. There were no allegations that the Brotherhood did not represent a majority of the employees, and there were no allegations that the contracts in question were entered into through coercion or against the will of the employees and did not represent their free choice. In fact, the contract was nowhere mentioned in either of the two complaints filed by the Board. The importance and the necessity of making such allegations will be shown in the discussion in argument IV, infra. Furthermore, it should be remembered that the Board and opposing Union admitted that no issue concerning representation was involved in this controversy. The evidence brought out at the hearings in no way indicated the contemplated cause of action; nothing was there present to show that it was intended to upset contracts entered into in good faith. While it is true that domination of the Union by the company was charged, these charges were not pressed, for in truth there was no basis for them, and such charges were in fact promptly dismissed.

Under such circumstances it is small wonder that the final order abrogating these contracts of the I. B. E. W. locals, which contracts purported to represent only mem-

bers of the union, came as a complete surprise. Under such circumstances the rule laid down in Morgan v. Wallace is entirely applicable. Here, as there, there is a complete absence of anything which would put the Brotherhood on warning as to the action contemplated by the Board or which would give it an opportunity to defend its rights under such contracts. The complaint fails entirely to disclose the contemplated action, and there was nothing in the proceedings which would give any intimation of the action to the Brotherhood. Finally, no intermediate report was filed before the final order was made. There is no proper hearing when the party does not know what issues are raised or what evidence is offered or considered thereunder and is given no opportunity to explain or refute it. **Interstate Commerce Commission v. Louisville & N. Ry.**, 227 U. S. 88, 57 L. Ed. 431. Judgment rendered against a party under a matter not within the pleadings, and not in fact litigated, is contrary to the fundamental principles of justice. **Reynolds v. Scheckton**, 140 U. S. 254, 35 L. Ed. 464. No hearing having been given which can in any way be said to conform to those fundamental requirements of fairness which are the essence of due process in a proceeding of a judicial nature, such hearing must accordingly be stricken as invalid. **Morgan v. Wallace**, 304 U. S. 1.

III.

The Act Does Not Authorize the Board to Issue Orders Invalidating or Adversely Affecting Contracts Entered Into Between the Company and a Bona Fide Labor Organization Not Claiming the Right to Exclusive Representation of All Employees, and There Is no Showing That a Substantial Number of Its Members Were Influenced Into Joining, and Where the Company Has Been Ordered to Take Other Action Fully Protecting Rights and Privileges of Its Employees Under the Wagner Act.

We come now to a fundamental question: does the National Labor Relations Act clothe the Board with the power to issue an order abrogating the I. B. E. W. contracts to which 30,000 employees of the Consolidated Edison Company have bound themselves under the circumstances disclosed in the record? It is over this question that the American Federation of Labor is vitally concerned, for upon its determination depends the practicality of advocating the making of contracts seeking to minimize industrial disputes where minority (there being no majority representative) rather than a majority of the employees of a particular employer are to be represented, or where the contract, as in the instant case, does not seek exclusive representation and is binding only on such employees as are members of the labor organization in question.

A proper determination of the validity of the action here undertaken by the Board can be made only by a close scrutiny into the attending circumstances. The important facts are these:

1. The contract in question by its terms applied to and

bound only those employees of the Consolidated Edison Company who are members of the International Brotherhood of Electrical Workers. (Note 1.)

The Board claims that Carlisle, president of the Company, regarded the contract as one giving the Brotherhood sole bargaining rights. Carlisle's views have no effect on what is the actual contract and its legal import. Certainly the Brotherhood cannot be penalized for the president's views by having its contracts abrogated. If this was the effect desired by **both** the parties, would it not have been simple to inject a provision giving the Brotherhood exclusive representation? Further, as regards the statements of Carlisle, there is no showing or charge that the company failed to deal with any other group when requested.

The contract is in no sense a closed-shop contract. Any misunderstanding among the employees that it is, or that it purports to establish the International Brotherhood of Electrical Workers as an exclusive representative for all

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Note 1.

"ARTICLE I.

Scope.

1. This agreement shall apply to all employees of the Edison Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen or temporary employees.

ARTICLE II.

No Discrimination.

2. The Edison Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Edison Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion by the Edison Company or any of its agents against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Edison Company time or property."

of the employees is effectively provided against by the Board's order forbidding the company to recognize the Union as the exclusive representative of the employees.

(2) It has been specifically found by the Board that the Brotherhood or its locals were not dominated nor their administration interfered with by the company, and there has been no order of disestablishment entered or any other action taken by the Board which directly or by inference refuses to recognize the legal existence of the Brotherhood and its locals as bona fide employee representatives.

(3) While interference by the company with its employees in the exercise of their rights to choose their own representatives has been found (although erroneously), it cannot be denied that employees of the company to the extent of at least one or two hundred, to use an extreme example, have not in any way been coerced, influenced or interfered with by the company into joining the Brotherhood. In all probability may thousands have voluntarily and without any hint of interference or persuasion become members of the locals. As to this no one can state, for the Board presented no findings as to what per cent of the employees it considered were interfered with, and there is nothing in the evidence to show whether ten, a hundred or a thousand employees were influenced into joining the I. B. E. W. against their will.

Under these circumstances—no domination of the unions, at least a minority of its members not interfered with or coerced, and the existence of a non-closed shop contract binding only on members of the union—we question the authority of the Board to abrogate the contracts in question.

Certainly there is no specific language authorizing such

conduct and certainly there is nothing in the purpose or policy of the Act which in reason or principle can justify interference of this nature. Rather the inference to be drawn from the language of the Act is that the right of a minority, assuming, of course, that there is no majority or exclusive representation contract in existence, to enter into contractual relations with the employer is to be fostered. Sections 7 and 8 of the Act guarantee the right of collective bargaining, and Section 9 (a) expressly provides that "any individual employee or group of employees shall have the right at any time to present grievances to their employer." While employers are not, of course, required to deal with organizations representing less than a majority, there is nothing in the Act, its scope, object or purpose, which invites the conclusion that the Act is designed to prevent or prohibit voluntary bargaining between the employer and any group of employees (when no single appropriate unit has a majority) or the making of contracts between such parties, provided the parties do not seek exclusive representation.

The only possible justification for abrogation of the contracts in the present case is to be found under Section 10 (c), which permits such affirmative action as will effectuate the policies of the Act. By this provision is claimed the authority to take appropriate action in each case to make effective the orders deemed necessary to protect the rights of employees under the Act.

But in the present case the employer has been required to cease and desist from all acts of interference or assistance or partiality and to post notice of such action and intention. The company has further been required to notify its employees that they are free to join any labor organization they wish and that it will bargain with any

organization chosen by the employees, and that the competing C. I. O. union will not be discriminated against. The employees, as commented on by the Circuit Court, have been given complete freedom to do as they please in the matter and have been completely informed of their rights. No right guaranteed by the Labor Act remains unprotected. Certainly to take the further action of abrogating contracts would be superfluous and assuredly, to warrant such action, additional findings to those that now appear in the record must be presented. As stated by this Court in **N. L. R. B. v. Pennsylvania Greyhound Lines**, 303 U. S. 261, the relief which the statute empowers the Board to grant is to be adapted to the situation which calls for redress. Administrative action can go no further than necessary. Had the contract purported to be the exclusive bargaining instrument for all the employees, then very conceivably further action under which the effect of such contracts could be overcome might be considered appropriate.

It may be urged that the abrogation of the contracts might be considered appropriate in the sense that such action **might tend to** offset the interfering activities. But appropriateness in the sense of facilitation alone cannot be the touchstone, for under such reasoning almost any kind of preventive action could be permitted, and the field of permissive action would be widened to include whatever might possibly even imaginatively assist in making appropriate the order in question. For instance, in the present case an order of disestablishment of all seven I. B. E. W. locals would undoubtedly assist in removing all vestiges of interference with the employees, and in that sense would be appropriate under the theory contended for by the Board. What was done by the abrogation of the contract in the instant case affords another example. Here the

rights and interests of many thousands of employees are adversely affected concerning whom there has been no hint of coercion merely because such action might possibly facilitate in making effective the order. Action against the interests of these persons cannot be permitted merely because it might be construed appropriate in the abstract, particularly when the rights of innocent parties are affected.

Let us look for a moment at the practical effect that the order here entered would have, not only on the unions presently involved, but as regards future bargaining activities. Pragmatic observation of the consequence of sanctioning the action in the present case indicates quite clearly the danger and injustice involved.

To permit this unnecessary action abrogating these contracts under the guise of a precautionary measure engenders consequences to the I. B. E. W. of a serious and permanent nature and will unjustifiably inflict a blow upon its prestige in this particular plant from which it can hardly recover. It is inevitable that the conviction will have been instilled in the minds of the workers that this union whose contracts have been declared at an end has been deemed undesirable by the National Labor Relations Board to represent any of the company workers. There will arise suspicion, a suspicion fanned only too readily by competing organizations, that the contracts in question are illegal and do not protect the interests of the workers—that these contracts have been foisted on them in deprivation of their rights by a union acting in connivance with their employer. It is unjust and intolerable that the International Brotherhood of Electrical Workers should be forced to undergo the humiliation of such treatment, and should be exposed to the possibility of such lethal consequences, merely because the Board assumes, in the total

absence of supporting evidence, that such action is appropriate. Under similar, although less compelling, circumstances the Circuit Court of Appeals in **N. L. R. B. v. Remington Rand**, 94 F. (2d) 862, held in regard to an order of disestablishment:

> "* * * It appears to us not only redundant, but to carry a charge of disapproval which the act does not warrant. It is to be remembered that the order is to be posted in all the plants, and upon the minds of laymen the addendum is quite likely to impress an unfair stigma on these unions. Our order will not contain this provision."

These considerations are totally aside from a just regard for the hundreds or thousands of those members who cannot possibly be said to have been coerced or interfered with, and who sincerely wish to continue under the contract in question as they have successfully done from the beginning.

If we consider the consequences of approval by this Court of procedure so arbitrary and officious in nature as precedent for future action, the results are seen to be equally invidious. In few, if in any, instances will groups of employees, not purporting to represent all of the employees, feel free to enter into negotiations with the company for the purpose of improving their conditions or outlawing lockouts and strikes; for should the N. L. R. B. somehow or other find that one or more of its members has been coerced, the Board will have authority to upset such contracts and stigmatize their action, and this in addition to its right to admonish the employer concerning any such interfering activities and to require him to notify the employees fully of their rights. Or going a step further, an enterprising and unscrupulous employer could

circumvent the contract entered into in good faith by his employees **purporting to represent either a majority or a minority** of such employees by seeing to it that several of the members of the contracting union have been coerced into joining. There is no circumstance in the present case which would prevent such a widespread application of the doctrine here contended for by counsel for the Board.

Officiousness of this nature is exactly the type of conduct which so often brings the actions of administrative tribunals into disrepute. When the effect of this procedure can be as harmful as it undoubtedly will be here, a weighty consideration of these effects must and should be made before the proposed interference is permitted. Appeal is made to this Court to grant protection in this case by ordering the Board to refrain from interfering with these contracts.

IV.

The National Labor Relations Board Has Not Jurisdiction in This Case Because the Respondent Is Not Engaged in "Interstate Commerce" Within the Purview of the Act. The American Federation of Labor Has Fostered and Is Fostering State Labor Relations Acts, and Is Vitally Interested in Protecting the Jurisdiction of the State Boards Against Encroachment of the National Board.

With deep conviction, we subscribe to the argument of respondent on the subject of jurisdiction as it relates to "commerce." It is our opinion that the National Labor Relations Board does not have jurisdiction in the case for the record indicates conclusively that respondent is engaged in intrastate commerce. The brief of respondent

fully and ably presents the facts and the law on this subject. It is therefore unnecessary for us to cover this ground again. However, so that it be made clear to the court that we do have a direct and important interest in this phase of the case we desire to set forth briefly our reasons:

The American Federation of Labor has fostered and is fostering State Labor Relations Acts. Five states now have such laws, of which New York is one. In some of its provisions the New York Act is fairer to all parties involved in labor relations than the National Act. We do not seek unnecessary centralization. Where states do have jurisdiction in administrative matters affecting labor relations we desire the State Administrative Agencies to exercise the jurisdiction. We desire it even to the exclusion of the Federal agencies.

This Act was fostered by the American Federation of Labor. The administration of it by the National Board contrasted with the administration of the several State acts by State Boards compels us to assert that the administration of the State Act by the State Boards is infinitely better and more in keeping with the spirit and intent of the law than the administration of the Act by the National Board.

Lest the foregoing may be deemed an individual view of the writer we set forth the statement of the Executive Council of the American Federation of Labor made public October 3, 1938, printed on page 69 of the report submitted to the Convention of the American Federation of Labor now being held in Houston, Texas:

> It is with deep regret that frankness impels us to report to you that the National Labor Relations Board has administered the Act contrary to its letter, spirit

and intent, with manifest bias and prejudice against the American Federation of Labor and in favor of dual and rival organizations. Our resentment has been aroused and your officers have publicly and officially in most vigorous terms condemned this unholy alliance between a government agency exercising quasi-judicial jurisdiction and the C. I. O.

Increasing importance which attaches to the actions of the National Labor Relations Board is evidenced by the fact that in the three years of its existence the Board has handled 16,500 cases involving almost 4,000,000 workers. As the work of the Board grew so did its tendency to go beyond the direct Congressional mandate and gradually to apply its decisions not to the questions of Labor's basic rights which the Wagner Act had been designed to protect, but to the problems of form and structure of the labor movement itself.

That a three-man board, composed of men with no direct labor experience, should undertake to shape the form and structure of our labor movement through decisions clothed with judicial authority, aroused among our unions a growing feeling of apprehension and indignation. Aware of its solemn responsibility to preserve and perpetuate the basic democratic principle of Labor's self-determination and self-government, the entire membership of the American Federation of Labor has united in its protest against this unwelcome intervention in Labor's internal problems by a Government bureau. The American Federation of Labor is aware that problems which have emerged and developed over a period of fifty or sixty years—problems with which Labor has struggled for several generations—cannot and should not be settled by snap judgments of outsiders no matter how well-intentioned or learned they may be.

It is with this invasion of Labor's democratic sovereignty that we have found fault and not with the

principles and purposes which the Act embodies and which will always have our unyielding support.

The Board has exceeded its public purpose and has vitiated the procedure delineated in the Act in three respects:

First, in a large number of instances its agents have shown gross favoritism and bias in the handling of cases, furthering the objectives of one union against another and favoring one form of labor organization.

Second, by administrative fiat the Board has set aside legally valid and binding contracts entered into in good faith by bona fide unions and employers.

Third, through the arbitrary determination of appropriate units in cases dealing with the question concerning representation, the Board has sought to impose upon workers regardless of their wishes the type of organization it favored.

Before the United States Supreme Court on April 12, 1937, handed down the five epoch-making decisions, upholding the constitutionality of the National Labor Relations Act, the administration of the law by the National Labor Relations Board was on the whole, just and proper. Such errors as were committed, were the natural result of a newly constituted Government agency administering a newly created law. Since the decisions of the Supreme Court of April 12, 1937, the Board has abandoned whatever restraint it imposed upon itself prior to this date and has brazenly and by official acts declared itself as a proponent of the C. I. O. fostering its interests and by the effect of its decrees recruited membership for the C. I. O.

In the short period of time from April 12, 1937, to the date of the holding of the Denver Convention, the tendency on the part of some members of the Board to pervert the spirit and intent of the law became ap-

parent. The American Federation of Labor, desiring to maintain the substantial benefits of the Act and desiring to accord the Board the benefit of whatever doubt may have existed as to its apparent unfair attitude towards the American Federation of Labor, abstained from any official disapproval of the Board in the report of the Executive Council to the Denver Convention.

A study of numerous cases discloses the following:

1—The Board has thwarted the intent of Congress in determining what shall constitute an appropriate unit for the purpose of collective bargaining.

2—The Board has by its decisions determined that craft unions or other labor unions of long standing and affiliated with the American Federation of Labor have no right to free choice and self-organization. The Board has assumed the power to make the determination of the proper unit contrary to the desires and wishes of craft groups or other recognized constituted unions affiliated with the American Federation of Labor.

3—The assumption of power by the Board to disregard existing units of long standing and to substitute its own ideas and judgment of what shall constitute the proper unit has caused disintegration and in some cases virtual disestablishment of American Federation of Labor unions.

4—The pronouncements of the Board respecting the proper unit disclose the determination on the part of the Board to comply with the contentions and demands of the C. I. O. and to favor C. I. O. unions in an effort to destroy American Federation of Labor unions.

5—Great difficulty is experienced by many American Federation of Labor unions which are strong and clearly have a majority in a plant in

getting the Board to order an election, when requests therefor are made by American Federation of Labor unions. By comparison, C. I. O. unions have secured rapid compliance with similar requests on their part.

6—American Federation of Labor unions have experienced great difficulty in obtaining decisions by the Board after elections have been held, and after hearings have been had. Many decisions have been held up for many months and in some cases for the purpose of affording C. I. O. unions an advantage through the delay.

7—Lawyers and personnel of the regional labor boards have personal relationships with C. I. O. officials and have frequently advised and guided them in pending controversies with American Federation of Labor unions.

8—The National Labor Relations Board has in many cases built up a straw-man by the use of the word "favoritism" by the employer, as a result of which it has violated the sanctity of contractual obligations between employers and American Federation of Labor unions, has invalidated contracts and virtually disestablished existing American Federation of Labor unions.

9—The Board has instituted investigations and hearings at the request of small minorities of C. I. O. members for the purpose of assisting the C. I. O. in disrupting existing relations between the employers and American Federation of Labor unions.

We are, therefore, vitally concerned in the subject of jurisdiction. The instant case is one involving intrastate commerce. We want jurisdiction lodged in the State Board where we believe it belongs.

V.

The Act Does Not Authorize the Board to Condemn Expressions of Sympathy by an Employer or Its Supervisory Employees With Aims and Principles of National Labor Organization Affiliates, if There Is No Actual Compulsion to Join, or Any Discriminatory Acts Threatened or Taken.

It is our final contention that the expressions of sympathy or preference on the part of the employer for the Brotherhood relied on by the Board to support its order of violation of Section 8 (1), do not under the circumstances here presented warrant a finding of a violation of Section 8 (1), there being no actual coercion on the part of the company of its employees to join the Brotherhood, and the Brotherhood not seeking exclusive representation. It is submitted that the conduct of the company as disclosed in the evidence does not under the circumstances involved constitute an interference or coercion within the meaning of the term as used in the Act, and a repudiation of said conduct is a denial of the right to free speech or the free expression of opinion. The evidence adduced by the Board at the hearing, even under the interpretation given it by attorneys for the Board, discloses at most an attitude by the company of preference for the A. F. of L. Union over the CIO Union. As to the extent of the conduct consistent with this admitted preference, suffice it to say that in the light of the record no conduct can be imputed to the company which would amount to coercion in the sense of compulsion as the term is usually understood, or to anything approaching the forcing of the employees to join the Brotherhood against their wishes, under threats and intimidation or the like. Certainly noth-

ing underhanded or malicious can be imputed to the Company. In this connection it is very significant to note that no employee testified at the hearings that he joined the Brotherhood because he was afraid not to. And, in fact, all employees had been expressly informed by the President that they were free to join any organization they chose, and the very wording of the contracts permitted them to do so, and to shift their affiliation whenever they or any of them were inclined to do so.

It is our contention that, where a national labor organization is involved, there must be showing of an actual coercion or compulsion in the sense of overcoming the will, before the conduct involved can be considered a violation of the Act, for it is not reasonable to suppose that mere innuendo, expressions of preferences on the part of the employer should have the same effect on employees in such a case as it might have were a company-dominated union the object of the influencing activities.

Before proceeding further with the discussion it is necessary to examine the language of the Act and to ascertain the meaning of such language. The Act, Section 8, prescribes that it shall be an unfair labor practice for an employer "to interfere with, restrain or coerce employees in the exercise of the rights guaranteed" under the Act—i. e., to self-organization, to join labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for their mutual aid or protection. This provision of the Act has been borrowed from a similar provision of the Railway Labor Act, which employs the language, "without interference, influence or coercion over the self-organization or designation of representatives." This court, in the case of **Texas and New Orleans Railway Company v. Brotherhood of Railway & Steamship Clerks**, 281 U. S. 548, 74 L. Ed.

1034, has indicated the extent and purport of these words. As stated by the Court (page 1045):

> "• • • The intent of Congress is clear with respect to the sort of conduct that is prohibited. 'Interference' with freedom of action and 'coercion' refer to well-understood concepts of the law. The meaning of the word 'influence' in this clause may be gathered from the context. Virginia v. Tennessee, 148 U. S. 503, 519, 37 L. Ed. 537, 543, 13 Sup. Ct. Rep. 728. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. **'Influence' in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.' The phrase covers the abuse of relation or opportunity so as to corrupt or override the will,** and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this act than in relation to well-known applications of the law with respect to fraud, duress and undue influence. • • •"

For the most part, action of the type here condemned has been undertaken in connection with a company-organized or company-dominated union. It is this circumstance which gives a substance of coercion to the otherwise harmless conduct of the employer. However, there is here present a national labor organization, no question of whose bona fide capacity or intent to represent the employees' interest can be or has been raised. It is submitted that this fact is one which casts an entirely different light upon the alleged coercive conduct—that there is presented an entirely different stage or background, so to speak, upon which such action is undertaken. This

circumstance renders conduct which in other circumstances might be considered at least morally coercive, in this instance entirely innocuous, and no more than an assertion of the inalienable right of all to give voice to an opinion or expression of belief. Here all demonstrations of sympathy or favoritism are made only in connection with a national labor organization.

The act was fostered by national organizations to overcome an evil, the evil of the company union. It was not considered an evil for employers to bargain with national labor organizations, nor was the act intended to pronounce favorable expressions of an employer for a national organization, even though they led to union affiliation by workers to be illegal, nor was it intended that such expressions shall be condemned. It is not the purpose of the act to condemn conduct which does not reach the extent of an actual compulsion, unless it is the purpose of the Act to arbitrarily condemn all action which can in any way be said to interfere with the workers regardless of the reality or substance of the interference, and regardless of to what extent the right of free speech may be impugned. But normal expressions are here inhibited, and this evidently is the interpretation adopted by the Board where in its alleged zeal to execute the letter of the Act it has forgotten its purpose. Such an interpretation forgets that the language defining the offense must at all times be circumscribed and restrained by what the spirit and purpose of the legislation portends. Otherwise administrative discretion, bounded only by the extent of administrative assumed expertness, will become vagrant and inquisitory, for assuredly the scope and breadth of the terms used to outline unfair labor practices, "interfere with," "restrain," "coerce," are in their natural state

unrestricted by confinement to the avowed purpose of legislation and therefore capable of including a variety of conduct entirely foreign to the purpose of the Act. Section 8 (1) is not intended as a legislative catch-all. Any action alleged to be coercive or alleged to interfere with the workers must be of a substantial or at least a real nature, and not such as could **possibly**, or as one could **imagine** would, affect the workers. This has clearly been stated by this Court. See **Texas & New Orleans case**, supra. A literal construction inconsistent with the policy of the legislature which promotes injustice or unreasonable or arbitrary results, cannot be permitted. As stated in **U. S. v. Cass**, 271 U. S. 354, 70 L. Ed. 983:

> "All laws are to be given a sensible construction; and a literal application of the statutes which would lead to absurd consequences should be avoided whenever a reasonable application can be given to it consistent with the legislative purpose."

General terms or words should be so limited in their application as not to lead to injustice or oppression. The reason of the law must in all cases prevail over the letter. It is the purpose of the Act to prevent the foisting of company unions or of unions not truly representative of the employees upon the workers. Such unions serving the employer's interest, rather than the employees', do not settle industrial strife, but, rather, embroil such strife and propagate dissatisfaction. The practice of foisting such company unions upon employers is obviated by forbidding coercion or intimidation or deceitful induction of employees into such unions in order that the right to bargain through a truly representative organization may be guaranteed. It is likewise the purpose of the Act to prevent interference with the employees' free choice, but this in-

terference must, as we have seen, be a substantial one within the spirit and intent of the law. It is not the purpose of the Act to curtail the employers' liberty of speech to the extent that he may not express honest opinions or indicate reasonable preferences when there can be created thereby no possibility that the right of employees to bargain through bona fide representatives of their own choosing will be lost. The present case permits of no such possibility.

It cannot be too strongly stressed that the substance and reality of the effect of any alleged unlawful action must prevail if officious activity of the Board is to be in any way curtailed. The presence of a national labor organization is a factor of extreme importance. The Board has failed to distinguish such a situation from one in which a company-dominated union is involved. An additional factor of great importance is that the employees of the Consolidated Edison Company were expressly told by the president of the company that they were free to join or not to join any organization they wished. (Note 1.) Finally, and almost conclusively, if the matter is to be regarded in any sort of a realistic fashion, we must consider the fact that the undisputed testimony discloses that 30,000 out of a total of 38,000 of the employees were members of the Brotherhood. To force this large number of workers to become members of the I. B. E. W. against their will would require coercive methods of Herculean

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Note 1. Mr. Carlisle, president of the company, addressing a large meeting of the employees on April 22nd, made the following statement (R. 1209 et seq.):

> "Let me say it very plainly, no member working for this company has got to do anything except what they want to do individually, on their own. I will be very clear about that. It is your selection. You are to do as you please. We are not taking the position that you must do this or you cannot do this. You have to make the choice. * * * You go out and do what you want."

proportions—at least far in excess of any disclosed in this record. It is difficult to see how any activities of the employer here condemned could "in fact or in effect" effectively operate to induce these employees to become members against their will.

In the past years the union movement has unfortunately become competitive. As a result, or perhaps as a cause, each of the two main competitors have adopted certain policies and principles to which it adhered and which it announces to the world, and which serve to add to or detract from their standing with the public, the workers, and with the employers. By way of illustration, the American Federation of Labor, for reasons irrelevant to this discussion, has condemned and refused to sanction the sitdown strike. This policy, or another one, might find favor or disfavor with some employers, as well as with some employees. What in the Act is there to prevent such employer from expressing a preference, in case he has one, as to one or the other organizations based upon that which the organizations themselves proclaim as their principles and upon which they seek to obtain membership of workers and agreements from employers? Are cooperation between employer and labor to be outlawed and the relationship of enmity to be fostered? Such is, evidently the Board's construction of the purpose of the Act. We, of course, have no reference to a situation where the conduct of the employer goes beyond mere indication of a preference, or expressions of opinions, and where the company acts favorably to one as against the other to such an extent as to actually force or intimidate the employees into such union against their will. We have not that situation here. At most, it can be said we have here merely a situation of a national union whose standing has found favor with the employer. It would seem more the

object of the Board, in keeping with the purpose of the Act, to continue and foster such friendship instead of seeking to condemn it.

The question of the effect of the conduct here involved on the employee is not one which will have to involve metaphysical or psychological refinements. Using the test of reasonable men it will be fairly simple to ascertain in each case whether in fact there was coercion or intimidation, and whether the men were deprived of their free will. In the present case the employees knew they were free to do as they wished, having been expressly told so by their employer. Even if we are to assume that the employer did indicate preference for one of two competing unions, but when such competing unions are national organizations it cannot be said that there is present by such expression of opinion the moral persuasion involved in those cases where the employer influence is brought to bear on behalf of a union of its own establishment. Likewise there would be none of the element of force incident to joining the union seeking and securing exclusive jurisdiction over the employees. Carlisle's personal opinion that the contract was exclusive (uncommunicated to the employees at large) is not conclusive that it was, and certainly a mere glance at the provisions of the contract indicates that it was not, and there is no evidence of any misstatement on this score by the union to the men. If an actual coercion by the company was intended, it would have been comparatively simple for the company to have made a contract for exclusive representation with its favorite union.

Certainly the presence of a national labor organization casts a mitigating light on all conduct of the employer here condemned. Thirty thousand men must be accorded some degree of understanding and comprehension, and it

cannot be presumed that they would act irrationally in the matter. This consideration has been entirely disregarded by the Board.

We respectfully submit, for the reasons hereinbefore set forth, the judgment of the Circuit Court of Appeals be reversed.

Respectfully submitted,

JOSEPH A. PADWAY,
Counsel, American Federation of Labor.

RESPONDENTS' EXHIBIT NO. 16.

MEMBERSHIP OF LOCAL UNIONS OF THE I B E W HAVING COLLECTIVE BARGAINING AGREEMENTS WITH COMPANIES OF THE CONSOLIDATED EDISON COMPANY OF NEW YORK, C., GROUP OF COMPANIES.

Membership of Local Unions of the I B E W Having Collective Bargaining Agreements With Companies of the Consolidated Edison Company of New York, Inc., Group of Companies.

(Data furnished to the Companies by the I B E W as of June 29, 1937.)

Local Union No.	Employees eligible to I B E W membership	Total membership	Per cent of eligibles	Paid-up members	Per cent of eligibles	Cards signed but dues not yet paid	Per cent of eligibles
B-825 (Brooklyn Edison Company, Inc.)	8,100	7,200	89.0	6,150	76.0	1,050	12.9
B-826 (New York Steam Corporation)	970	910	93.7	850	87.7	60	6.1
B-828 (Consolidated Telegraph and Electrical Subway Company)	1,600	1,534	96.1	1,534	96.1	0	0
B-829 (Consolidated Edison Company of New York, Inc.—Electric)	13,200	8,680	65.8	6,018	45.6	2,662	20.2
B-830 (Consolidated Edison Company of New York, Inc.—Gas)	7,000	5,644	80.6	4,144	59.1	150	2.1
B-832 (Westchester Lighting Company)	3,082	2,968	96.3	2,375	77.1	593	19.2
B-839 (New York and Queens Electric Light and Power Company)	4,200	3,387	84.2	2,637	62.7	900	21.4
Totals	38,152	30,473	80.0%	23,708	62.2%	6,765	17.7%

SUPREME COURT OF THE UNITED STATES.

Nos. 19, 25.—October Term, 1938.

Consolidated Edison Company of New York, Inc., and its Affiliated Companies, et al., Petitioners,
19 *vs.*
National Labor Relations Board, et al.

International Brotherhood of Electrical Workers, International Brotherhood of Electrical Workers, Local Union No. B-825, et al., Petitioners,
25 *vs.*
National Labor Relations Board, et al.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 5, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization, filed a charge, on May 5, 1937, with the National Labor Relations Board that the Consolidated Edison Company of New York and its affiliated companies were interfering with the right of their employees to form, join or assist labor organizations of their own choosing and were contributing financial and other support, in the manner described, to the International Brotherhood of Electrical Workers, an affiliate of the American Federation of Labor. The Board issued its complaint and the employing companies, appearing specially, challenged its jurisdiction. On the denial of their request that this question be determined initially, the companies filed answers reserving their jurisdictional objections. After the taking of evidence before a trial examiner, the proceeding was transferred to the Board which on November 10, 1937, made its findings and order.

The order directed the companies to desist from labor practices found to be unfair and in violation of Section 8 (1) and (3) of the National Labor Relations Act,[1] directed reinstatement of six

[1] 49 Stat. 449; 29 U. S. C. Secs. 158(1)(3).

discharged employees with back pay, and required the posting of notices to the effect that the companies would cease the described practices and that their employees were free to join or assist any labor organization for the purpose of collective bargaining and would not be subject to discharge or to any discrimination by reason of their choice. 4 N. L. R. B. 71.

It appeared that between May 28, 1937, and June 16, 1937, the companies had entered into agreements with the International Brotherhood of Electrical Workers and its local unions, providing for the recognition of the Brotherhood as the collective bargaining agency for those employees who were its members, and containing various stipulations as to hours, working conditions, wages, etc., and for arbitration in the event of disputes. The Board found that these contracts were executed under such circumstances that they were invalid and required the companies to desist from giving them effect. *Id.* At the same time the Board decided that the companies had not engaged in unfair labor practices within the meaning of Section 8(2) of the Act.[2] That clause makes it an unfair labor practice to "dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it". Accordingly the order dismissed the complaint, so far as it alleged a violation of Section 8(2), without prejudice. *Id.*

The companies petitioned the Circuit Court of Appeals to set aside the order and a petition for the same purpose was presented by the Brotherhood and its locals. These labor organizations had not been parties to the proceeding before the Board but intervened in the Court of Appeals as parties aggrieved by the invalidation of their contracts. The Board in turn asked the court to enforce the order. The United Electrical and Radio Workers of America appeared in support of the Board. The court granted the Board's petition (95 F. (2d) 390). We issued writs of certiorari upon applications of the companies (No. 19) and of the Brotherhood and its locals (No. 25). May 16, 1938.

The questions presented relate (1) to the jurisdiction of the Board; (2) to the fairness of the hearing; (3) to the sufficiency of the evidence to sustain the findings of the Board with respect

[2] 29 U. S. C. 158(2).

to coercive practices, discrimination and the discharge of employees; and (4) to the invalidation of the contracts with the Brotherhood and its locals.

The pertinent facts will be considered in connection with our discussion of these questions.

First.—The jurisdiction of the Board.—That is, was the proceeding within the scope of its authority validly conferred? The petitioning companies constitute an integrated system. With the exception of one company which maintains underground ducts for electrical conductors in New York City, they are all public utilities engaged in supplying electric energy, gas and steam (and certain by-products) within that City and adjacent Westchester County. The enterprise is one of great magnitude. The companies serve over 3,500,000 electric and gas customers,—a large majority using the service for residential and domestic purposes. In 1936 the companies supplied about 97.5 per cent. of the total electric energy sold in the City of New York and about one hundred per cent of that sold in Westchester County. They do not sell for resale without the State. They have about 42,000 employees, their total payrolls in 1936, with retirement annuities and separation allowances, amounting to nearly $82,000,000.

Petitioners urge that these predominant intrastate activities, carried on under the plenary control of the State of New York in the exercise of its police power, are not subject to federal authority. It does not follow, however, because these operations of the utilities are of vast concern to the people of the City and State of New York, that they do not also involve the interests of interstate and foreign commerce in such a degree that the Federal Government was entitled to intervene for their protection. For example, the governance of the intrastate rates of a railroad company may be of great importance to the State and an appropriate object of the exertion of its power, but the Federal Government may still intervene to protect interstate commerce from injury caused by intrastate operations and to that end may override intrastate rates and supply a dominant federal rule. *The Shreveport Case*, 234 U. S. 342; *Wisconsin Railroad Commission* v. *Chicago, B. & Q. Rwy. Co.*, 257 U. S. 563; *New York* v. *United States*, 257 U. S. 591. See, also, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 37-41.

In the present instance we may lay on one side, as did the Circuit Court of Appeals, the mere purchases by the utilities of the supplies of oil, coal, etc., although very large, which come from without the State and are consumed in the generation and distribution of electric energy and gas. Apart from those purchases, there is undisputed and impressive evidence of the dependence of interstate and foreign commerce upon the continuity of the service of the petitioning companies. They supply electric energy to the New York Central Railroad Company, the New York, New Haven and Hartford Railroad Company, and the Hudson and Manhattan Railroad Company (operating a tunnel service to New Jersey) for the lighting and operation of passenger and freight terminals, and for the movement of interstate trains. They supply the Port of New York Authority with electric energy for the operation of its terminal and the Holland Tunnel. They supply a majority of the piers of trans-Atlantic and coastal steamship companies along the North and East Rivers, within the City of New York, for lighting, freight handling and related uses. They serve the Western Union Telegraph Company, the Postal Telegraph Company, and the New York Telephone Company with power for transmitting and receiving messages, local and interstate. They supply electric energy for the trans-Atlantic radio service of the Radio Corporation of America. They provide electric energy for the Floyd Bennett Air Field in Brooklyn for various purposes, including field illumination, a radio beam and obstruction lighting. Under contracts with the Federal Government they supply electric energy for six lighthouses and eight beacon or harbor lights; also light, heat and power for the general post office and branch post offices, the United States Barge Office, the Customs House, appraisers' warehouse and various federal office buildings.

It cannot be doubted that these activities, while conducted within the State, are matters of federal concern. In their totality they rise to such a degree of importance that the fact that they involve but a small part of the entire service rendered by the utilities in their extensive business is immaterial in the consideration of the existence of the federal protective power. The effect upon interstate and foreign commerce of an interruption through industrial strife of the service of the petitioning companies was vividly described by

the Circuit Court of Appeals in these words: "Instantly, the terminals and trains of three great interstate railroads would cease to operate; interstate communication by telegraph, telephone, and radio would stop; lights maintained as aids to navigation would go out; and the business of interstate ferries and of foreign steamships, whose docks are lighted and operated by electric energy, would be greatly impeded. Such effects we cannot regard as indirect and remote". 95 F. (2d) 390, 894.

If industrial strife due to unfair labor practices actually brought about such a catastrophe, we suppose that no one would question the authority of the Federal Government to intervene in order to facilitate the settlement of the dispute and the resumption of the essential service to interstate and foreign commerce. But it cannot be maintained that the exertion of federal power must await the disruption of that commerce. Congress was entitled to provide reasonable preventive measures and that was the object of the National Labor Relations Act.

Congress did not attempt to deal with particular instances. It created for that purpose the National Labor Relations Board. In conferring authority upon that Board, Congress had regard to the limitations of the constitutional grant of federal power. Thus, the "commerce" contemplated by the Act (aside from that within a Territory or the District of Columbia) is interstate and foreign commerce. The unfair labor practices which the Act purports to reach are those affecting that commerce. Section 10(a).[1] In determining the constitutional bounds of the authority conferred, we have applied the well-settled principle that it is the effect upon interstate or foreign commerce, not the source of the injury, which is the criterion. It is not necessary to repeat what we said upon this point in the review of our decisions in the case of *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, *supra*. And whether or not particular action in the conduct of intrastate enterprises does affect that commerce in such a close and intimate fashion as to be subject to federal control, is left to be determined as individual cases arise. *Id.*, see, also, *Santa Cruz Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 466, 467.

Petitioners urge that the legislature of New York has enacted comprehensive and adequate measures to protect against the inter-

[1] 29 U. S. C. 160(a).

ruption of petitioners' services through labor disputes. Not only has the State long had legislation relating to the operations of public utility companies (Public Service Law) but the legislature has recently enacted the New York State Labor Relations Act (Laws of 1937, Chapter 443, effective July 1, 1937; Article 20 of the Labor Law) which provides a complete supervision of labor relations for employers in intrastate enterprises similar to that set up by the National Labor Relations Act with respect to interstate or foreign commerce. The state act, with added details, follows closely the national act. The state act provides for collective bargaining, including the conduct of elections to determine the representation of employees, and empowers the state Labor Relations Board to prevent unfair labor practices. In seeking to avoid a clash with federal authority, the state act is made inapplicable "to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act".[4] It is manifest that the enactment of this state law could not override the constitutional authority of the Federal Government. The State could not add to or detract from that authority. But it is also true that where the employers are not themselves engaged in interstate or foreign commerce, and the authority of the National Labor Relations Board is invoked to protect that commerce from interference or injury arising from the employers' intrastate activities, the question whether the alleged unfair labor practices do actually threaten interstate or foreign commerce in a substantial manner is necessarily presented. And in determining that factual question regard should be had to all the existing circumstances including the bearing and effect of any protective action to the same end already taken under state ar rity. The justification for the exercise of federal power should clearly appear. *Florida* v. *United States*, 282 U. S. 194, 211, 212. But the question in such a case would relate not to the existence of the federal power but to the propriety of its exercise on a given state of facts.

In the instant case, not only was this proceeding instituted before the New York Labor Relations Act became effective but, so far as

[4] New York State Labor Relations Act, Section 715.

appears, no proceedings have been taken under it in relation to the unfair labor practices here alleged For the present purpose, it is sufficient to say that there has been no exertion of state authority which can be taken to remove the need for the exertion of federal authority to protect interstate and foreign commerce. The exercise of the federal power to protect interstate and foreign commerce from injury does not depend upon a clash with state action and need not await the exercise of state authority.

We conclude that the Board had authority to entertain this proceeding against the petitioning companies.

Second.—The fairness of the hearing,—procedural due process. Apart from the action of the Board with respect to the Brotherhood contracts, which we shall consider separately, the contentions under this head relate (1) to amendments of the complaint, (2) to the refusal to hear certain witnesses, and (3) to the transfer of the proceeding to the Board and its determination without an intermediate report or opportunity for hearing upon proposed findings.

The original complaint related to the discharge of five employees and alleged unfair labor practices in the employment of industrial spies and undercover operatives, in allowing employees to solicit membership in the Brotherhood during working hours and on the property of the companies, in compensating such employees while so engaged and in furnishing them office space and financial assistance while refusing such privileges to the United, and generally in coercion of the employees to join the Brotherhood. The amendments were made from time to time in the course of the hearing. In particular, they added another employee to those alleged to have been wrongfully discharged and supplied an omitted allegation that the other unfair labor practices affected commerce. At the close of the evidence the trial examiner granted a motion to conform the pleadings to the proof on the statement of the attorney for the Board that no important change was intended and that the amendment was sought merely to make more definite and certain what appeared in the complaint. These were discretionary rulings which afford no ground for challenging the validity of the hearing.

A more serious question grows out of the refusal to receive the testimony of certain witnesses. The taking of evidence began on June 3, 1937, and was continued from time to time until June 23d when the attorney for the Board unexpectedly announced that

its case would probably be closed on the following day. At that time the Board completed its proof, with the reservation of one matter, and at the request of the companies' counsel the hearing was adjourned until July 6th in order that Mr. Carlisle, the chairman of the board of trustees of the Consolidated Edison Company, and Mr. Dean, the vice president of one of its affiliates, who were then unavailable, could testify. In response to the examiner's inquiry, the companies' counsel stated that the direct examination of all witnesses on their behalf would not occupy more than a day. On July 6th the testimony of Mr. Carlisle and Mr. Dean was taken and the companies also offered the testimony of two other witnesses (then present in the hearing room) in relation to the discharge of the employee with respect to whom the complaint had been amended as above stated. The examiner refused to receive this testimony following a ruling of the Board (made in the course of correspondence with the companies' counsel during the adjournment) to the effect that no other testimony than that of Mr. Carlisle and Mr. Dean would be received on the adjourned day. An offer of proof was made which showed the testimony to be highly important with respect to the reasons for the discharge. It was brief and could have been received at once without any undue delay in the closing of the hearing.

We agree with the Court of Appeals that the refusal to receive the testimony was unreasonable and arbitrary. Assuming, as the Board contends, that it had a discretionary control over the conduct of the proceeding, we cannot but regard this action as an abuse of discretion. But the statute did not leave the petitioners without remedy. The court below pointed to that remedy, that is, to apply to the Court of Appeals for leave to adduce the additional evidence; on such an application and a showing of reasonable grounds the court could have ordered it to be taken. Section 10(e)(f).[5] Petitioners did not avail themselves of this appropriate procedure.

Shortly after the evidence was closed, the counsel for the petitioning companies filed a brief with the trial examiner. Several weeks later, on September 29th, the proceeding was transferred to the Board. The examiner made no tentative report or findings and there was no opportunity for a hearing before the Board itself. It must be assumed, however, that the brief for the companies was transmitted to the Board and was considered by it in making its

[5] 29 U. S. C. 160(e)(f).

decision. The Board contends that the companies submitted their brief without asking for an oral argument, as contemplated by the Board's rule (Rule 29), or for an intermediate report, and hence that they are not in a position to complain on either score. The Board also insists that after the transfer of the proceeding, it was within the discretion of the Board to adopt any one of the courses of procedure enumerated in its rule (Rule 38)[6] of which petitioners were informed by the service of a copy of the Board's rules at the beginning of the proceeding. Petitioners say that at the very outset they had asked, on their special appearance, for a hearing before

[6] Rules 37 and 38 are as follows:

"Sec. 37. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may permit a charge to be filed with it, in Washington, D. C., or may, at any time after a charge has been filed with a Regional Director pursuant to Section 2 of this Article, order that such charge, and any proceeding which may have been instituted in respect thereto—

(a) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(b) be consolidated for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same region; or

(c) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in or transferred to such other Region, or for any other purpose.

The provisions of Sections 3 to 31, inclusive, of this Article shall, in so far as applicable, apply to proceedings before the Board pursuant to this Section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this Section, be reserved to and exercised by the Board. After the transfer of any charge and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to this Section, the provisions of Sections 3 to 36, inclusive, of this Article, shall apply to such charge and such proceeding as if the charge had originally been filed in the Region to which the transfer is made.

"Sec. 38. After a hearing for the purpose of taking evidence upon the complaint in any proceeding over which the Board has assumed jurisdiction in accordance with Section 37 of this Article, the Board may—

(a) direct that the Trial Examiner prepare an Intermediate Report, in which case the provisions of Sections 32 to 36, inclusive, of this Article shall in so far as applicable govern subsequent procedure, and the powers granted to Regional Directors in such provisions shall for the purpose of this Section be reserved to and exercised by the Board; or

(b) decide the matter forthwith upon the record, or after the filing of briefs or oral argument; or

(c) reopen the record and receive further evidence, or require the taking of further evidence before a member of the Board, or other agent or agency; or

(d) make other disposition of the case.

The Board shall notify the parties of the time and place of any such submission of briefs, oral argument, or taking of further evidence".

the Board upon the question of its jurisdiction and that all proceedings be transferred to the Board, and that the rules induced the belief that after the transfer to the Board at the close of the evidence there would be further proceedings at which they would be heard. But we cannot say that the rules justified that expectation or dispensed with the necessity, after the transfer, of a suitable request by the petitioners for such additional hearing as they desired. It does not appear that such request was made.

It cannot be said that the Board did not consider the evidence or the petitioners' brief or failed to make its own findings in the light of that evidence and argument. It would have been better practice for the Board to have directed the examiner to make a tentative report with an opportunity for exceptions and argument thereon. But, aside from the question of the Brotherhood contracts, we find no basis for concluding that the issues and contentions were not clearly defined and that the petitioning companies were not fully advised of them. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 350, 351. The points raised as to the lack of procedural due process in this relation cannot be sustained.

Third.—The sufficiency of the evidence to sustain the findings of the Board with respect to coercive practices, discrimination and discharge of employees.—The companies contend that the Court of Appeals misconceived its power to review the findings and, instead of searching the record to see if they were sustained by "substantial" evidence, merely considered whether the record was "wholly barren of evidence" to support them. We agree that the statute, in providing that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive", means supported by substantial evidence. *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142, 147. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Appalachian Electric Power Co.* v. *National Labor Relations Board*, 93 F. (2d) 985, 989; *National Labor Relations Board* v. *Thompson Products*, 97 F. (2d) 13, 15; *Ballston-Stillwater Co.* v. *National Labor Relations Board*, 98 F. (2d) 758, 760. We do not think that the Court of Appeals intended to apply a different test. In saying that the record was not "wholly barren of evidence" to

sustain the finding of discrimination, we think that the court referred to substantial evidence. *Ballston-Stillwater Co.* v. *National Labor Relations Board, supra.*

The companies urge that the Board received "remote hearsay" and "mere rumor". The statute provides that "the rules of evidence prevailing in courts of law and equity shall not be controlling".[7] The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. *Interstate Commerce Commission* v. *Baird,* 194 U. S. 25, 44; *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.,* 227 U. S. 88, 93; *United States* v. *Abilene & Southern Rwy. Co.,* 265 U. S. 274, 288; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 442. But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.

Applying these principles, we are unable to conclude that the Board's findings in relation to the matters now under consideration did not have the requisite foundation. With respect to industrial espionage, the companies say that the employment of "outside investigating agencies" of any sort had been voluntarily discontinued prior to November, 1936, but the Board rightly urges that it was entitled to bar its resumption. Compare *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.,* 304 U. S. 257, 260. In relation to the other charges of unfair labor practices, the companies point to the statement of Mr. Carlisle at a large meeting of the employees in April, 1937, when the recognition of the Brotherhood was under discussion, that the employees were absolutely free to join any labor organization,—that they could do as they pleased. Despite this statement and assuming, as counsel for the companies urges, that where two independent labor organizations seek recognition it cannot be said to be an unfair labor practice for the employer merely to express preference of one organization over the other, by reason of the former's announced policies, in the absence of any attempts at intimidation or coercion, we think that there was

[7] Section 10(b); 29 U. S. C. 160(b).

still substantial evidence that such attempts were made in this case.

It would serve no useful purpose to lengthen this opinion by detailing the testimony. We are satisfied that the provisions of the order requiring the companies to desist from the discriminating and coercive practices described in subdivisions (a) to (e) inclusive and in subdivision (h) of paragraph one of its order,[8] and to reinstate the six employees mentioned with back pay, and to post notices assuring freedom from discrimination and coercion as provided in paragraph two of the order, rested upon findings sustained by the evidence and that the decree of the Court of Appeals enforcing the order in these respects should be affirmed.

Fourth.—The Brotherhood contracts.—The findings of the Board that the contracts with the Brotherhood and its locals were invalid, and the Board's order requiring the companies to desist from giving effect to these contracts, present questions of major importance. We approach them in the light of three cardinal considerations. One is that the Brotherhood and its locals are labor organizations independently established as affiliates of the American Federation of Labor and are not under the control of the employing companies. So far as there was any charge, under Section 8(2) of the Act, that the employing companies had dominated or interfered with the formation or administration of any labor organization or had contributed financial or other support to it, the charge was dismissed. Another consideration is that the contracts recognize the right of employees to bargain collectively; they recognize the Brotherhood as the collective bargaining agency for the employees who belong to it, and the Brotherhood agrees for itself and its

[8] These provisions of the order in substance required the companies to desist from discouraging membership in the United or encouraging membership in the Brotherhood, or any other labor organization of their employees, by discharges, or threats of discharge, or refusal of reinstatement, because of membership or activity in connection with any such labor organization; from permitting representatives of the Brotherhood to engage in activities in its behalf during working hours or on the employers' property unless similar privileges were granted to the United and all other labor organizations; from permitting employees who were officials of the Employees' Representation Plans to use the employers' time, property and money in behalf of the Brotherhood or any other labor organization; from employing detectives to investigate the activities of their employees in behalf of the United or other labor organizations, or employing for such purpose any other sort of espionage; and from "in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations" or to bargain collectively or to engage in concerted activities for that purpose or other mutual aid or protection.

members not to intimidate or coerce employees into membership in the Brotherhood and not to solicit membership on the time or property of the employers. The third consideration is that the contracts contain important provisions with regard to hours, working conditions, wages, sickness, disability, etc., and also provide against strikes or lockouts and for the adjustment and arbitration of labor disputes, thus constituting insurance against the disruption of the service of the companies to interstate or foreign commerce through an outbreak of industrial strife. It is not contended that these provisions are unreasonable or oppressive but on the contrary it was virtually conceded at the bar that they are fair to both the employers and employees. It also appears from the evidence, which was received without objection, that the Brotherhood and its locals comprised over 30,000, or 80 per cent of the companies' employees out of 38,000 eligible for membership.

The Brotherhood and its locals contend that they were indispensable parties and that in the absence of legal notice to them or their appearance, the Board had no authority to invalidate the contracts. The Board contests this position, invoking our decision in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261. That case, however, is not apposite, as there no question of contract between employer and employee was involved. The Board had found upon evidence that the employer had created and fostered the labor organization in question and dominated its administration in violation of Section 8(2). The statement that the "Association" so formed and controlled was not entitled to notice and hearing was made in that relation. *Id.*, pp. 262, 270, 271. It has no application to independent labor unions such as those before us. We think that the Brotherhood and its locals having valuable and beneficial interests in the contracts were entitled to notice and hearing before they could be set aside. *Russell* v. *Clark's Executors*, 7 Cranch, 69, 96; *Mallow* v. *Hinde*, 12 Wheat. 193, 198; *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 235; *Garzot* v. *de Rubio*, 209 U. S. 283, 297; *General Investment Co.* v. *Lake Shore Railway Co.*, 260 U. S. 261, 285. The rule, which was applied in the cases cited to suits in equity, is not of a technical character but rests upon the plainest principle of justice, equally applicable here. See *Mallow* v. *Hinde, supra.*

The Board urges that the National Labor Relations Act does not contain any provision requiring these unions to be made parties;

that Section 10(b)[9] authorizes the Board to serve a complaint only upon persons charged with unfair labor practices and that only employers can be so charged. In that view, the question would at once arise whether the Act could be construed as authorizing the Board to invalidate the contracts of independent labor unions not before it and also as to the validity of the Act if so construed. But the Board contends that the Brotherhood had notice, referring to the service of a copy of the complaint and notice of hearing upon a local union of the Brotherhood on May 12, 1937, and of an amended notice of hearing on May 25, 1937. Petitioners rejoin that the service was not upon a local whose rights were affected but upon one whose members were not employees of the companies' system. The Board says, however, that the Brotherhood, and the locals which were involved, had actual notice and hence were entitled to intervene (Sec. 10(b)) and chose not to do so. But neither the original complaint—which antedated the contracts—nor the subsequent amendments contained any mention of them and the Brotherhood and its locals were not put upon notice that the validity of the contracts was under attack. The Board contends that the complaint challenged the legality of the companies' "relations" with the Brotherhood. But what was thus challenged cannot be regarded as going beyond the particular practices of the employers and the discharges which the complaint described. In these circumstances it cannot be said that the unions were under a duty to intervene before the Board in order to safeguard their interests.

The Board urges further that the unions have availed themselves of the opportunity to petition for review of the Board's order in the Court of Appeals, and that due process does not require an opportunity to be heard before judgment, if defenses may be presented upon appeal. *York* v. *Texas*, 137 U. S. 15, 20, 21; *American Surety Company* v. *Baldwin*, 287 U. S. 156, 168; *Moore Ice Cream Company* v. *Rose*, 289 U. S. 373, 384. But this rule assumes that the appellate review does afford opportunity to present all available defenses including lack of proper notice to justify the judgment or order complained of. *Id.*

Apart from this question of notice to the unions, both the companies and the unions contend that upon the case made before the

[9] 29 U. S. C. 160(b).

Board it had no authority to invalidate the contracts. Both insist that that issue was not actually litigated, and the record supports that contention. The argument to the contrary, that the contracts were necessarily in issue because of the charge of unfair labor practices against the companies, is without substance. Not only did the complaint as amended fail to assail the contracts but it was stated by the attorney for the Board upon the hearing that the complaint was not directed against the Brotherhood; that "no issue of representation (was) involved in this proceeding"; and that the Board took the position that the Brotherhood was "a *bona fide* labor organization" whose legality was not attacked. But the Board says that on July 6th (the last of the contracts having been made on June 16th) the companies amended their answer stating that the making of the contracts had rendered the proceeding moot, and that this necessarily put the contracts in issue. We cannot so regard it. We think that the fair construction of the position thus taken on the last day of the hearings was entirely consistent with the view that the validity of the contracts had not been, and was not, in issue. And the counsel for the companies point to their brief before the Board, which they produce, as proceeding on the basis that the validity of the contracts had not been assailed.

Further, the Act gives no express authority to the Board to invalidate contracts with independent labor organizations. That authority, if it exists, must rest upon the provisions of Section 10(c).[10] That section authorizes the Board, when it has found the employer guilty of unfair labor practices, to require him to desist from such practices "and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act". We think that this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order.

The power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to

[10] 29 U. S. C. 160(c).

thwart the purposes of the Act. The continued existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequence of violation of the Act whose continuance thwarts the purposes of the Act and renders ineffective any order restraining the unfair practices. Compare *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, supra*. Here, there is no basis for a finding that the contracts with the Brotherhood and its locals were a consequence of the unfair labor practices found by the Board or that these contracts in themselves thwart any policy of the Act or that their cancellation would in any way make the order to cease the specified practices any more effective.

The Act contemplates the making of contracts with labor organizations. That is the manifest objective in providing for collective bargaining. Under Section 7[11] the employees of the companies are entitled to self-organization, to join labor organizations and to bargain collectively through representatives of their own choosing. The 80 per cent of the employees who were members of the Brotherhood and its locals, had that right. They had the right to choose the Brotherhood as their representative for collective bargaining and to have contracts made as the result of that bargaining. Nothing that the employers had done deprived them of that right. Nor did the contracts make the Brotherhood and its locals exclusive representatives for collective bargaining. On this point the contracts speak for themselves. They simply constitute the Brotherhood the collective bargaining agency for those employees who are its members. The Board by its order did not direct an election to ascertain who should represent the employees for collective bargaining. Section 9(c).[12] Upon this record, there is nothing to show that the employees' selection as indicated by the Brotherhood contracts has been superseded by any other selection by a majority of employees of the companies so as to create an exclusive agency for bargaining under the statute, and in the absence of such an exclusive agency the employees represented by the Brotherhood, even if they were a minority, clearly had the right to make their own choice. Moreover, the fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused

[11] 29 U. S. C. 157.
[12] 29 U. S. C. 159(c).

by industrial strife. This purpose appears to be served by these contracts in an important degree. Representing such a large percentage of the employees of the companies, and precluding strikes and providing for the arbitration of disputes, these agreements are highly protective to interstate and foreign commerce. They contain no terms which can be said to "affect commerce" in the sense of the Act so as to justify their abrogation by the Board. The disruption of these contracts, even pending proceedings to ascertain by an election the wishes of the majority of employees, would remove that salutary protection during the intervening period.

The Board insists that the contracts are invalid because made during the pendency of the proceeding. But the effect of that pendency would appropriately extend to the practices of the employers to which the complaint was addressed. See *Jones* v. *Securities Commission*, 298 U. S. 1, 15. It did not reach so far as to suspend the right of the employees to self-organization or preclude the Brotherhood as an independent organization chosen by its members from making fair contracts on their behalf.

Apart from this, the main contention of the Board is that the contracts were the fruit of the unfair labor practices of the employers; that they were "simply a device to consummate and perpetuate" the companies' illegal conduct and constituted its culmination. But, as we have said, this conclusion is entirely too broad to be sustained. If the Board intended to make that charge, it should have amended its complaint accordingly, given notice to the Brotherhood, and introduced proof to sustain the charge. Instead it is left as a matter of mere conjecture to what extent membership in the Brotherhood was induced by any illegal conduct on the part of the employers. The Brotherhood was entitled to form its locals and their organization was not assailed. The Brotherhood and its locals were entitled to solicit members and the employees were entitled to join. These rights cannot be brushed aside as immaterial for they are of the very essence of the rights which the Labor Relations Act was passed to protect and the Board could not ignore or override them in professing to effectuate the policies of the Act. To say that of the 30,000 who did join there were not those who joined voluntarily or that the Brotherhood did not have members whom it could properly represent in making these contracts would be to indulge an extravagant and

unwarranted assumption. The employers' practices, which were complained of, could be stopped without imperiling the interests of those who for all that appears had exercised freely their right of choice.

We conclude that the Board was without authority to require the petitioning companies to desist from giving effect to the Brotherhood contracts, as provided in subdivision (f) of paragraph one of the Board's order.

Subdivision (g) of that paragraph, requiring the companies to cease recognizing the Brotherhood "as the exclusive representative of their employees" stands on a different footing. The contracts do not claim for the Brotherhood exclusive representation of the companies' employees but only representation of those who are its members, and the continued operation of the contracts is necessarily subject to the provision of the law by which representatives of the employees for the purpose of collective bargaining can be ascertained in case any question of "representation" should arise. Section 9.[13] We construe subdivision (g) as having no more effect than to provide that there shall be no interference with an exclusive bargaining agency if one other than the Brotherhood should be established in accordance with the provisions of the Act. So construed, that subdivision merely applies existing law.

The provision of paragraph two of the order as to posting notices should be modified so as to exclude any requirement to post a notice that the existing Brotherhood contracts have been abrogated.

The decree of the Circuit Court of Appeals is modified so as to hold unenforceable the provision of subdivision (f) of paragraph one of the order and the application to that provision of paragraph two subdivision (c), and as so modified the decree enforcing the order of the Board is affirmed.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[13] 29 U. S. C. 159.

SUPREME COURT OF THE UNITED STATES.

Nos. 19, 25.—October Term, 1938.

Consolidated Edison Company of New York, Inc., and its Affiliated Companies, et al., Petitioners,
19 *vs.*
National Labor Relations Board, et al.

International Brotherhood of Electrical Workers, International Brotherhood of Electrical Workers, Local Union No. B-825, et al., Petitioners,
25 *vs.*
National Labor Relations Board, et al.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 5, 1938.]

Mr. Justice Butler.

I agree with the Court's decision that the Board was without authority to require employers to cease and desist from giving effect to the contracts referred to in subdivision (f) of the first paragraph of the order. And I am of opinion that the entire order should be set aside.

The Board was without jurisdiction. The facts on which it assumed to exert power need not be narrated; they are sufficiently stated by the lower court and in the opinion here. Both courts rightly treat the case as one where neither employers nor employees are engaged in interstate or foreign commerce. Here, the employers are engaged solely in intrastate activities. A very small percentage of the products, furnished in that State to others, is by the latter used in interstate commerce. This Court has held that Congress cannot regulate relations between employers and employees engaged exclusively in intrastate activities.

In *Schechter Corp.* v. *United States* (May, 1935), 295 U. S. 495, decided shortly before passage of the National Labor Relations Act, we held that the federal government cannot regulate the wages and hours of labor of persons employed in the internal commerce of the State.

In *Carter* v. *Carter Coal Co.* (May, 1936), 298 U. S. 238, decided shortly after passage of the National Labor Relations Act, we held that provisions of the Bituminous Coal Conservation Act of 1935 looking to the control of wages, hours, and working conditions of persons engaged in producing coal about to move in interstate commerce and seeking to guarantee their right of collective bargaining, were beyond the power of Congress, for the reasons that it has no general power of regulation to promote the general welfare; that the power to regulate commerce does not include the power to control the conditions in which coal is produced; that the effect upon interstate commerce of labor conditions involved in the production of coal, including disputes and strikes over wages and working conditions, is indirect.

In the period, less than a year, intervening between the *Carter* case and *Labor Board* v. *Jones & Laughlin* (April, 1937), 301 U. S. 1, and other Labor Board cases decided on the same day,[1]—and, as I think, wrongly decided—it was, on the authority of the *Schechter* and *Carter* cases, held by four circuit courts of appeals and six district courts that the power of Congress does not extend to regulations between employers and their employees engaged in local production. Their decisions are cited in the dissenting opinion in the *Labor Board* cases. 301 U. S. 76. In that period the lower courts were bound by our decisions to condemn the National Labor Relations Act, construed to apply to production or intrastate commerce, as not within the power of Congress.

This case is not distinguishable from the *Schechter* case or the *Carter* case. There, as here, the activities of the employers and their employees were exclusively local. It differs from the *Jones & Laughlin* case and all the other Labor Board cases.[2] In each of them, the employer was to an extent engaged in interstate commerce. The opinion just announced points to no distinction

[1] Labor Board *v.* Fruehauf Co., 301 U. S. 49. Labor Board *v.* Clothing Co., 301 U. S. 58. Associated Press *v.* Labor Board, 301 U. S. 103. Washington Coach Co. *v.* Labor Board, 301 U. S. 142.

[2] Labor Board *v.* Fruehauf Co., 301 U. S. 49. Labor Board *v.* Clothing Co., 301 U. S. 58. Associated Press *v.* Labor Board, 301 U. S. 103. Washington Coach Co. *v.* Labor Board, 301 U. S. 142. Labor Board *v.* Greyhound Lines, 303 U. S. 261. Labor Board *v.* Pacific Lines, 303 U. S. 272. Santa Cruz Co. *v.* Labor Board, 303 U. S. 453. Labor Board *v.* Mackay Radio & T. Co., 304 U. S. 333.

between this case and the *Schechter* or *Carter* case. Nor does it refer to the Labor Board cases as controlling here. But, to support this federal advance into local fields, the Court brings forward three railroad rate cases: *Houston & Texas Ry.* v. *United States* (*The Shreveport Case*), 234 U. S. 342; *Wisconsin R. R. Com.* v. *C., B. & Q. R. R. Co.*, 257 U. S 563; and *New York* v. *United States*, 257 U. S. 591.

These cases give no support to the idea that, in absence of conflict between state and federal policy or regulation, Congress has power to control labor conditions in production or intrastate transportation. In each, the federal interference is shown necessary in order to protect national authority, interstate commerce, and interstate rates established under federal law. Brief reference to the conditions that led up to these cases and the substance of the decisions will be sufficient to show they have no application here.

In 1906 and 1907, Minnesota reduced intrastate rates substantially below lawfully established interstate rates. Suits were brought by their stockholders to restrain the carriers from obeying, and state officers from enforcing, the local rates on the ground, *inter alia*, that they were repugnant to the commerce clause and that enforcement would necessarily interfere with and burden interstate transportation by the carriers. The *Minnesota Rate Cases*, 230 U. S. 352. The controversy was everywhere regarded as important. See p. 395. The facts found by the special master and adopted by the circuit court are stated in its opinion (*Shepard* v. *Northern Pac. Ry. Co.* (1911), 184 F. 765, 775-794) and summarized in the opinion of this Court. pp. 381-395. They show that the intrastate rates discriminated against interstate commerce and made it impossible for the carriers to collect, or for the United States to enforce, valid higher interstate rates. The trial court held the state measures repugnant to the commerce clause and upon that ground, among others, enjoined enforcement of the rates they prescribed.

The cases were argued here in April, 1912, and decided June 9, 1913. This Court upheld the state rates, notwithstanding the commerce clause, the Act to Regulate Commerce, the interstate rates lawfully established in accordance with federal law, and the destructive discrimination. It held that, in the absence of a finding

by the Interstate Commerce Commission of unjust discrimination, the intrastate rates were valid. The opinion reserved, p. 419, the question whether the Commission was empowered to make the determination. And that question was decided in the *Shreveport* case, 234 U. S. 342, 357.

That case was pending here before the decision in the *Minnesota Rate Cases*, and was decided in June, 1914. The Interstate Commerce Commission had found that rates prescribed by Texas operated to discriminate against interstate traffic from Shreveport, Louisiana, into Texas moving on lawfully established interstate rates. In order to eliminate the discrimination, the Commission directed the carriers to cease charging higher rates for interstate transportation than those charged for transportation between Texas points. This Court held the carriers free to raise the intrastate rates so as to remove the discrimination.

Wisconsin R. R. Com. v. *C., B. & Q. R. R. Co.* (1922), 257 U. S. 568, upheld § 15a of the Interstate Commerce Act, added by § 422, Transportation Act, 1920, which empowered the Interstate Commerce Commission to remove discrimination resulting from intrastate rates unduly low, as compared with corresponding rates fixed under that section.

New York v. *United States*, 257 U. S. 591, held that intrastate rates so low that they discriminated against interstate commerce within the meaning of the Transportation Act, 1920, may constitutionally be increased under that Act by the Commission to conform with like rates in interstate commerce fixed by it.

The constitutional questions decided in these three cases were essentially different from the one of federal power here presented. The state measures there overborne were repugnant to existing federal regulations of interstate commerce. Application of the lower state rates made it impossible for federal authority to require, or to enable, carriers to collect interstate rates lawfully established as just and reasonable. The policy and provisions of the New York State Labor Relations Act are in substance precisely the same as the national policy and the National Labor Relations Act. The State's interest, purpose, and ability to safeguard against possible interruption of production and service by labor disputes are not less than those of the federal government. The State's need

of continuous service is immediate, while the effect of interruption on interstate or foreign commerce would be mediate, indirect, and relatively remote. The record fails to disclose any condition, existing or threatened, to suggest as necessary federal action to protect interstate commerce, or any other interest of the government against interruption or interference liable to result from controversies between these employers and their employees. The right of the States, consistently with national policy and law, freely to exert the powers safeguarded to them by the Federal Constitution is essential to the preservation of this government. *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 12, 13. *Kidd* v. *Pearson*, 128 U. S. 1, 21. Asseveration of need to uphold our dual form of government and the safeguards set for protection of the States and the liberties of the people against unauthorized exertion of federal power, does not assure adherence to, or conceal failure to discharge, duty to support the Constitution. See *Schechter Corp.* v. *United States, supra*, 548-550. Cf. *Labor Board* v. *Jones & Laughlin, supra*, 29-30.

Mr. Justice McReynolds concurs in this opinion.

SUPREME COURT OF THE UNITED STATES.

Nos. 19, 25.—October Term, 1938.

Consolidated Edison Company of New York, Inc., and its Affiliated Companies, et al., Petitioners,
19 vs.
National Labor Relations Board, et al.

International Brotherhood of Electrical Workers, et al., Petitioners,
25 vs.
National Labor Relations Board, et al.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 5, 1938.]

Mr. Justice Reed concurring in part, dissenting in part.

While concurring in general with the conclusions of the Court in *Consolidated Edison Company* v. *N. L. R. B.* and *International Brotherhood of Electrical Workers* v. *N. L. R. B.*, I find myself in disagreement with the conclusion that the National Labor Relations Board was "without authority to require the petitioning companies to desist from giving effect to the Brotherhood contracts, as provided in subdivision (f) of paragraph one of the Board's order." In that paragraph the petitioner companies are ordered to:

"I. Cease and desist from:

(f) Giving effect to their contracts with the International Brotherhood of Electrical Workers."

It is agreed that the "fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife." This is to be accomplished by contracts with labor organizations, reached through collective bargaining. The labor organizations in turn are to be created through the self-organization of workers, free from interference, restraint or coercion of the employer.[1] The forbidden interference is an unfair labor practice, which the Board, exclusively,

[1] Labor Board Cases, 301 U. S. 1.

is empowered to prevent by such negative and affirmative action as will effectuate the policies of the Act.[2] To interpret the Act to mean that the Board is without power to nullify advantages obtained by the Edison companies through contracts with unions, partly developed by the unlawful interference of the Edison companies with self-organization, is to withdraw from the Board the specific authority granted by the Act to take affirmative action to protect the workers' right of self-organization, the basic privilege guaranteed by the Act. Freedom from employer domination flows from freedom in self-organization.

It is assumed that the terms of these contracts in all respects are consistent with the requirements of the National Labor Relations Act and are in themselves, considered apart from the actions of the Edison companies in securing their execution, advantageous in preserving industrial harmony.

The Board found that the Consolidated Edison Company and its affiliates, the respondents before the Board,

"deliberately embarked upon an unlawful course of conduct, as described above, which enabled them to impose the I. B. E. W. upon their employees as their bargaining representative and at the same time discourage and weaken the United which they opposed. From the outset the respondents contemplated the execution of contracts with the I. B. E. W. locals which would consummate and perpetuate their plainly illegal course of conduct in interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to them under Section 7 of the Act. It is clear that the granting of the contracts to the I. B. E. W. by the respondents was a part of the respondents' unlawful course of conduct and as such constituted an interference with the rights of their employees to self-organization. The contracts were executed under such circumstances that they are invalid, notwithstanding that they are in express terms applicable only to members of the I. B. E. W. locals. If the contracts are susceptible of the construction placed upon them by the respondents, namely, that they were exclusive collective bargaining agreements, then, *a fortiori*, they are invalid."[3]

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[2] Secs. 7, 8, 10, Act of July 5, 1935, 49 Stat. 452-55.
[3] 4 N. L. R. B. 71, 94.

The evidence upon which this finding is based is summarized in detail in 4 N. L. R. B., pages 83 to 94. It shows a consistent effort on the part of the officers and foremen of the Edison Company and its affiliates, as well as other employees of the Edison companies—formerly officers in the recently disestablished "Employees' Representation Plans," actually company unions—to further the development of the I. B. E. W. unions by recognition, contracts for bargaining, openly expressed approval, establishment of locals and by permitting solicitation of employees on the time and premises of the Edison companies. By the Wagner Act employees have "the right to self-organization." It is an "unfair labor practice for an employer" to "interfere with, restrain or coerce employees" in the exercise of that right.[4] The Board concluded that the contracts with the I. B. E. W. unions were a part of a systematic violation by the Edison companies of the workers' right to self-organization.

This determination set in motion the authority of the Board to issue an order to cease and desist from the unfair labor practice and to take "such affirmative action . . . as will effectuate the policies of this Act." The evidence was clearly sufficient to support the conclusion of the Board that the Edison companies entered into the contracts as an integral part of a plan for coercion of and interference with the self-organization of their employees. This justified the Board's prohibition against giving effect to the contracts. The "affirmative action" must be connected with the unfair practices but there could be no question as to the materiality of the contracts. As this Court, only recently, said, as to the purpose of the Congress in enacting this Act:

"It had before it the *Railway Clerks* case which had emphasized the importance of union recognition in securing collective bargaining, Report of the Senate Committee on Education and Labor, S. Rep. 573, 74th Cong., 1st Sess., p. 17, and there were then available data showing that once an employer has conferred recognition on a particular organization it has a marked advantage over any other in securing the adherence of employees, and hence in preventing the recognition of any other."[5]

To this, it is answered that the extent of the coercion is left to "mere conjecture"; that it would be an "extravagant" assumption to say that none of the 30,000 members "joined vol-

[4] Secs. 7 and 8, Act of July 5, 1935, 49 Stat. 452.
[5] N. L. R. B. v. Pennsylvania Greyhound Lines, 303 U. S. 261, 267.

untarily."; and that the "employers' practices, which were complained of, could be stopped without imperiling the interests of those who for all that appears had exercised freely their right of choice."[6] On the question whether or not the Edison companies' activities as to these contracts were a part of a definite plan to interfere with the right of self-organization, these answers are immaterial. It is suggested that the problem of the contracts should be approached with three cardinal considerations in mind: (1) that one contracting party is an "independently established" labor organization, free of domination by the employer; (2) that the contracts grant valuable collective bargaining rights; and (3) that they contain provisions for desirable working privileges. Such considerations should affect discretion in shaping the proper remedy. They are negligible in determining the power of the Board. They would, if given weight, permit paternalism to be substituted for self-organization. The findings of the Board, based on substantial evidence, are conclusive.[7] There was evidence of coercion and interference, and the Board did determine that the policies of the Act would be effectuated by requiring the companies to cease giving effect to these contracts.

The petitioners, however, aside from the merits, raise procedural objections. It is contended that before the Board could have authority to order the Edison companies to cease and desist from giving effect to their contracts with the unions, it was necessary that the unions as well as the Edison companies should have legal notice or should appear; that the unions were indispensable parties. This Court has held to the contrary in *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261. This case determined that where an employer has created and fostered a labor organization of employees, thus interfering with their right to self-organization, the employer can be required without notice to the organization, to withdraw all recognition of such organization as the representative of its employees. It is said that this case "is not apposite, as there no question of contract between employer and employee was involved. The Board had found upon evidence that the employer had created and fostered the labor organization in question and dominated its administration in violation of Sec. 8(2)."[8] In the instant

[6] Consolidated Edison Co. *v.* N. L. R. B., Nos. 19 and 25, this Term, rendered this day.

[7] Washington Coach Co. *v.* Labor Board, 301 U. S. 142, 146.

[8] Consolidated Edison Co. *v.* N. L. R. B., Nos. 19 and 25, this Term, decided this day.

case it was found that no such domination existed. In the *Greyhound* case, the Board found not only domination under Sec. 8(2) but also, as in this case, an unfair labor practice under Sec. 8(1). The company's violation of Sec. 8(1) was predicated on its interference with self-organization.[9] In the *Greyhound* case it was said that the organization was not entitled to notice and hearing because "the order did not run against the Association."[10] Here the unions are affected by the action on the contracts, exactly as the labor organization in the *Greyhound* case was affected by the order to withdraw recognition. It would seem immaterial whether those contracts were violative of one or both or all the prohibited unfair labor practices.

A further procedural objection is found in the failure of the complaint, or any of its amendments, to seek specifically a cease and desist order against continued operation under the contracts. The companies were charged with allowing organization meetings on the company time and on company property, permitting solicitation of membership during company time, and paying overtime allowances to those engaged in soliciting or coercing workers to join the contracting unions. The complaint said that similar aid was not extended to a competing union and that office assistance was given to the effort to get members for the contracting unions. These charges made it obvious that the contracts were obtained from the unions which were improperly aided by the Edison companies in violation of the prohibitions against interference with self-organization. Contracts so obtained were necessarily at issue in an examination of the acts in question.

Certainly the Edison companies and the contracting unions could have been allowed on a proper showing a further hearing on the question of the companies continuing recognition of the contracts. By section 10(f) the Edison companies and the unions could obtain a review of the Board's order. In that hearing either or both could show to the court [Sec. 10(e)] that additional evidence as to the contracts was material and that it had not been presented because the aggrieved parties had not understood that the contracts were subject to a cease and desist order or had not known of the proceeding. The court could order the Board to take the ad-

[9] N. L. R. B. v. Pennsylvania Greyhound Lines, 303 U. S. 261, 263.
[10] *Id.*, 271.

ditional evidence. This simple practice was not followed. Although all parties were before the lower court on the review, the petitioners chose to rely on the impotency of the Board to enter an order affecting the contracts.

In these circumstances the provision of the order requiring the Edison companies to cease from giving effect to their contracts with the contracting unions is proper. This order prevents the Edison companies from reaping an advantage from those acts of interference found illegal by the Board.

Mr. Justice BLACK concurs in this opinion.